

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 28, NUMBER 12  
SATURDAY, JUNE 1, 2002

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## MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on Tuesday, June 11, 2002, at 10 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 2487-2488 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

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA - June 11, 2002 at 10:00 a.m., Room 149, Capitol Annex**

**DEPARTMENT OF LAW  
Office of the Attorney General**

**Consumer Protection**

40 KAR 2:075E. Commonwealth of Kentucky No Telephone Solicitation Calls List. ("E" expires 10/18/02)

**Racial Profiling**

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**REVENUE CABINET**

**General Administration**

103 KAR 1:050. Forms manual.

**BOARDS AND COMMISSIONS**

**Board of Pharmacy**

201 KAR 2:105. Licensing and drug distribution requirements for drug manufacturers and wholesalers.

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

**Fish**

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**Game**

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- 301 KAR 2:075. Wildlife rehabilitation permits.
- 301 KAR 2:140 & E. Requirements for wild turkey hunting. ("E" expires 8/18/02)
- 301 KAR 2:142 & E. Spring wild turkey hunting. ("E" expires 8/18/02)
- 301 KAR 2:172. Deer hunting seasons and requirements.
- 301 KAR 2:174. Deer hunting zones.
- 301 KAR 2:176. Deer control tags.
- 301 KAR 2:179. State park deer hunts.
- 301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game.

**Hunting and Fishing**

301 KAR 3:022. License, tax and permit fees.

**Water Patrol**

301 KAR 6:040E. Zoning or marking of waterways. ("E" expires 10/18/02)

**DEPARTMENT OF AGRICULTURE**

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- 302 KAR 20:010. Definitions.
- 302 KAR 20:100. Garbage.
- 302 KAR 20:110 & E. Treatment of imported mares. ("E" expires 8/18/02)
- 302 KAR 20:140 & E. Breeding shed for female equines. ("E" expires 8/18/02)
- 302 KAR 20:220. Pseudorabies: eradication and control.

**JUSTICE CABINET  
Department of Corrections**

**Office of the Secretary**

- 501 KAR 6:020. Corrections policies and procedures.
- 501 KAR 6:040. Kentucky State Penitentiary.
- 501 KAR 6:050. Luther Luckett Correctional Complex.
- 501 KAR 6:080. Department of Corrections manual.

**Department of Criminal Justice Training**

**Kentucky Law Enforcement Council**

503 KAR 1:110E. Department of Criminal Justice Training basic training: graduation requirements; records. ("E" expires 6/20/2002) (Deferred from February)

**EDUCATION, ARTS, AND HUMANITIES CABINET  
Kentucky Board of Education  
Department of Education  
Office of District Support Services**

**General Administration**

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**School Administration and Finance**

702 KAR 3:300. Approval for school district lease and retirement incentive annuity agreements.

**School Terms, Attendance and Operation**

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

**LABOR CABINET**

**Department of Workers' Claims**

- 803 KAR 25:021. Individual self-insurers.
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**PUBLIC PROTECTION AND REGULATION CABINET  
Department of Mines and Minerals**

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- 805 KAR 8:030. Criteria for the imposition and enforcement of sanctions against certified miners.
- 805 KAR 8:040. Criteria for the imposition and enforcement of sanctions against owners and part-owners of licensed premises.
- 805 KAR 8:050. Criteria for the imposition and enforcement of sanctions against noncertified personnel.
- 805 KAR 8:060. Criteria for the imposition and enforcement of sanctions against licensed premises.

**Department of Insurance**

**Health Insurance Contracts**

- 806 KAR 17:081. Minimum standards for long-term care insurance policies. (Amended After Hearing) (Deferred from May)

**Kentucky Racing Commission**

**Harness Racing**

- 811 KAR 1:105. Review and appeal. (Deferred from May)

**Department of Housing, Buildings and Construction**

**Kentucky Building Code**

- 815 KAR 7:120 & E. Kentucky Building Code/2002. ("E" expires 9/18/02)
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- 815 KAR 20:020. Parts or materials list. (Deferred from May)

**CABINET FOR HEALTH SERVICES  
Department for Public Health**

**Communicable Diseases**

- 902 KAR 2:151. Repeal of 902 KAR 2:150 and 902 KAR 2:160.
- 902 KAR 2:180. Human immunodeficiency virus/acquired immunodeficiency disease syndrome (HIV/AIDS) education approval requirements.

**Sanitation**

- 902 KAR 10:085. Kentucky on-site sewage disposal systems. (Amended After Hearing)

**State Health Plan**

- 902 KAR 17:041E. State Health Plan for facilities and services. ("E" expires 10/18/02)

**Health Services and Facilities**

- 902 KAR 20:016E. Hospitals; operations and services. ("E" expires 8/18/02) (Deferred from April)

**Department for Medicaid Services**

**Services**

- 907 KAR 1:013E. Payments for hospital inpatient services. ("E" expires 7/19/02) (Deferred from March)
- 907 KAR 1:018E. Reimbursement for drugs. ("E" expires 10/18/02)
- 907 KAR 1:025E. Payment for services provided by an intermediate care facility for the mentally retarded and developmentally disabled, a dually-licensed pediatric facility, an institution for mental diseases, a nursing facility with an all-inclusive rate unit. ("E" expires 8/18/02) (Deferred from April)
- 907 KAR 1:030E. Home health agency services. ("E" expires 6/20/02) (Deferred from February)
- 907 KAR 1:031E. Payments for home health services. ("E" expires 8/18/02) (Deferred from April)
- 907 KAR 1:055E. Payments for primary care center, federally-qualified health center, and rural health clinic services. ("E" expires 6/20/02) (Deferred from February)
- 907 KAR 1:081E. Repeal of 907 KAR 1:080. ("E" expires 6/20/02) (Will Not be Replaced by Ordinary) (Deferred from February)
- 907 KAR 1:170E. Payments for home and community based waiver services. ("E" expires 8/18/02) (Deferred from April)
- 907 KAR 1:320E. Kentucky Patient Access and Care System (KenPAC). ("E" expires 9/18/2002) (Deferred from May)
- 907 KAR 1:340. Reimbursement for hospice services.
- 907 KAR 1:720E. Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with the state Title V agency. ("E" expires 8/18/02) (Deferred from April)

**CABINET FOR FAMILIES AND CHILDREN  
Department of Community Based Services  
Family Support**

**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. ("E" expires 7/19/02)

**Protection and Permanency**

**Child Welfare**

- 922 KAR 1:320. Service appeals.
- 922 KAR 1:360. Private child care placement, levels of care, and payment.
- 922 KAR 1:460. Standards for youth wilderness camps. (Amended After Hearing) (Deferred from April)

**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, MAY 15, 2002

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

April 30, 2002

(1) **11 KAR 3:100**, Administrative wage garnishment.

(2) The Kentucky Higher Education Assistance Authority intends to amend an administrative regulation governing the subject matter listed above, particularly adoption of the latest available figures reflecting annual consumer expenditures published by the United States Department of Labor, Bureau of Labor Statistics, and adoption of the latest available poverty guidelines published by the United States Department of Health and Human Services in order to determine the validity of a borrower's claim of extreme financial hardship.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, June 21, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (800) 693-8211, Fax (502) 696-7293.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 164.748(10) and 164.748(19).

(b) The Kentucky Higher Education Assistance Authority intends to amend 11 KAR 3:100 as follows: Section 4(6) of the above-cited administrative regulation establishes economic standards for evaluating a borrower's assertion that issuance of an administrative wage garnishment would pose an extreme financial hardship. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to include the most current figures published by the federal government to accurately reflect current poverty guidelines and consumer spending figures to assure an accurate standard for determining the validity of a claim of extreme financial hardship.

(c) The necessity and function of the proposed administrative regulation are as follows: KRS 164.748(19) authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation; and KRS 164.748(10) authorizes the authority to conduct administrative hearings, exempt from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation establishes the procedures for implementing wage garnishment in accordance with requirements of the federal act.

(d) The benefits expected from the administrative regulation are: To establish an objective standard for extreme financial hardship that will be based on current economic data as established by the federal government.

(e) The administrative regulation will be implemented as follows: Upon notice of the Authority's intent to issue an administrative wage garnishment, a borrower contesting the garnishment and asserting a claim of extreme financial hardship will submit financial data to be evaluated in comparison to the data contained in the administrative regulation. Expenditures reported by the borrower which exceed the amount specified in the administrative regulation will be presumed to be unnecessary. Thus the most current figures relating to consumer expenditures must be utilized in the administrative regulation.

April 30, 2002

(1) **11 KAR 5:001**, Definitions pertaining to 11 KAR Chapter 5.

(2) The Kentucky Higher Education Assistance Authority intends to amend the administrative regulation governing the subject matter listed above, particularly, to amend the definition of "eligible program of study" to include students enrolled in an "equivalent undergraduate program of study" as designated by the Council on Postsecondary Education. This is to conform the definition to HB 684 passed in the 2002 Regular Session of the General Assembly.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for Thursday, June 21, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (800) 693-8211, Fax (502) 696-7293.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation:

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

(b) The Kentucky Higher Education Assistance Authority intends to amend 11 KAR 5:001 as follows: Section 1(11) of the above-cited administrative regulation, to amend the definition of "eligible program of study" to include students enrolled in an "equivalent undergraduate program of study" as designated by the Council on Postsecondary Education.

(c) The necessity and function of the proposed administrative regulation are as follows: KRS 264.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation defines terms used in 11 KAR Chapter 5.

(d) The benefits expected from the administrative regulation are: This is to conform the definition to HB 684 passed in the 2002 Regular Session of the Kentucky General Assembly.

(e) The administrative regulation will be implemented as follows: When an institution designates an enrolled student as a student eligible for grant program participation, the institution will be required to certify that the student is enrolled in an eligible program of study.

April 30, 2002

(1) **11 KAR 5:034**, CAP grant student eligibility.

(2) The Kentucky Higher Education Assistance Authority intends to amend an administrative regulation governing the subject matter listed above, particularly, to modify student enrollment requirements for CAP grant eligibility; to provide maximum periods of grant program eligibility for full-time students enrolled in institutions using quarters and to establish the maximum number of grant awards that may be received during an academic year by students enrolled in institutions using quarters.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, June 21, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (800) 693-8211, Fax (502) 696-7293.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation:

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

(b) The Kentucky Higher Education Assistance Authority intends to amend 1 KAR 5:034 as follows: Section 1(2) of the above-cited administrative regulation provides that in order to be eligible to receive a CAP grant, a student must be enrolled in an educational institution for at least 6 semester hours or half-time, whichever is greater. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide that a student be enrolled at least as a part-time student, which has the same substantive meaning but uses a defined term. The Kentucky Higher Education Assistance Authority intends to delete Section 1(10)(a) and (b) of the above-cited administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorizes the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. This administrative regulation establishes student eligibility requirements for the College Access Program.

(d) The benefits expected from the administrative regulation are: To insure that students who are determined to have CAP grant eligibility be at least a part-time student, that students enrolled at an educational institution using quarter hours as a part-time or full-time students receive the maximum CAP grant allowed for any academic period.

(e) The administrative regulation will be implemented as follows: Students will receive disbursements if they meet the requirements of this section by being at least a part-time student and receiving a maximum total disbursement of \$1,260 for any given academic year.

April 30, 2002

(1) **11 KAR 5:130**, Student application.

(2) The Kentucky Higher Education Assistance Authority intends to amend the administrative regulation governing the subject matter listed above, particularly the manner in which students apply for a grant as well as the establishment of financial need for KHEAA grant programs.

(3) A public hearing to receive oral and written comments on the proposed amendment to administrative regulations has been scheduled for Thursday, June 21, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (800) 693-8211, Fax (502) 696-7293.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed amendment:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 164.746(6), 164.748(4) and 164.7535.

(b) The Kentucky Higher Education Assistance Authority intends to amend 11 KAR 5:130 as follows: Section 1 (2) of the above-cited administrative regulation provides that applicants indicate an educational institution on the application, the first of which will be used in determining a grant program award. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide that the Free Application for Federal Student Aid be completed and submitted in accordance with instructions on the application and that an applicant shall indicate the educational institutions on the application, all of which will be used to determine a KHEAA grant program award. Section 2, pertaining to a deadline for notifying the Kentucky Higher Education Assistance Authority of a change in the choice of institution, will be deleted in its entirety. The Kentucky Higher Education Assistance Authority intends to replace that section of the above-cited administrative regulation to provide that applicants should submit corrected information using the Student Aid Report (SAR).

(c) The necessity and function of the proposed administrative regulation are as follows: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. This administrative regulation prescribes the form to be used by a student to apply for and establish financial need for KHEAA grant programs.

(d) The benefits of this administrative regulation are: To insure that all educational institutions listed on the Free Application for Federal Student Aid be considered in determining a KHEAA grant program award.

(e) The administrative regulation will be implemented as follows: Students submit the Free Application for Federal Student Aid (FAFSA) as the application for KHEAA grant eligibility. The applicant will submit changes in information by indicating the changed information on the Student Aid Report (SAR), received from the federal government, and returning the SAR to the federal processor. The applicant's eligibility for KHEAA grants will be considered based upon the information provided on the FAFSA, including a list of up to six educational institutions that the applicant may plan to attend.

April 30, 2002

(1) **11 KAR 5:145**, CAP grant award determination procedure.

(2) The Kentucky Higher Education Assistance Authority intends to amend the administrative regulation governing the subject matter listed above, particularly redefining the estimated family contribution and establishing a maximum disbursement for any given academic year.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for Thursday, June 21, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (800) 693-8211, Fax (502) 696-7293.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed amendment:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 164.748(4), 164.753(4) and 164.7889(3).

(b) The Kentucky Higher Education Assistance Authority intends to amend 11 KAR 5:145 as follows: Section 1 of the above-cited administrative regulation provides that in order to qualify for a CAP grant based on financial need, the applicant's expected family contribution shall be \$3,550.00 or less. The Kentucky Higher Education Assistance Authority intends to amend this section of the administrative regulation by providing that an applicant's expected family contribution shall be \$3,800.00 or less. Section 2(2)(b) and (c); Section 2(3)(a), (b) and (c); Section 2(4)(a), (b), (c) and (d); and Section 2(5)(a) and (b) will be deleted in their entirety. Section 2(3) of the above-cited regulation will be added in order to establish the aggregate CAP grant award amount as \$1,260 in any given academic year.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7889(3) requires the authority to promulgate an administrative regulation that increases both the maximum amount available under the grant programs, and increases the average income level for qualification for the grant programs if sufficient funds are available. This administrative regulation prescribes the award determination procedures for the CAP Grant Program.

(d) The benefits expected from the administrative regulation are: To ensure that students applying for a CAP grant meet the required financial criteria and those students receive the maximum CAP grant allowed for any academic period.

(e) The administrative regulation will be implemented as follows: Students will be considered for CAP grant awards after meeting all required criteria.

April 30, 2002

(1) **11 KAR 5:150**, Notification of award.

(2) The Kentucky Higher Education Assistance Authority intends to amend an administrative regulation governing the subject matter listed above, particularly the manner in which students are notified of grant eligibility or grant denial, the amount of the grant, and the updating of the College Summary Files.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday,

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June 21, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (800) 693-8211, Fax (502) 696-7293.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to amend will be as follows: Currently, Section 1 of the above-cited administrative regulation provides that each grant recipient shall receive notification of his or her award along with disbursement information. Corrected information must be reported by the recipient to the authority. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to provide that the authority notify each grant recipient of his or her determination of eligibility. Currently, Section 2 of the above-cited administrative regulation provides that notification be given to individual applicants of the reason for their denial; but when funds are no longer available, public notification replaces individual notification. The Kentucky Higher Education Assistance Authority intends to amend this section of the above-cited administrative regulation by directing applicants to the KHEAA Web site to obtain the authority's determination of eligibility for a KHEAA grant, the amount of the award, or the reason for the denial. Currently, Section 3 of the above-cited administrative regulation provides that the authority shall periodically forward to the KGPO at each educational institution a listing of applicants indicating that institution as the one in which they plan to enroll. The Kentucky Higher Education Assistance Authority intends to amend this section of the above-cited administrative regulation to provide that the authority will update each institution's College Summary File, listing applicants who have indicated that institution as one in which they may enroll.

(c) The necessity and function of the proposed administrative regulation are as follows: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation sets forth the procedures for notification to applicants and to educational institutions.

(d) The benefits expected from the amendment are: To ensure institutions and students be efficiently notified in regard to eligibility and award amounts as well as facilitate providing information to educational institutions by making it available on the KHEAA Web site.

(e) The administrative regulation will be implemented as follows: When the authority notifies a student of his or her eligibility status, the student will be directed to the KHEAA Web site. The authority will provide the College Summary File for educational institutions to access on its Web site.

April 30, 2002

(1) **11 KAR 5:160**, Disbursement procedures.

(2) The Kentucky Higher Education Assistance Authority intends to amend the administrative regulation governing the subject matter listed above, particularly establishing the disbursement procedures for KHEAA grant programs.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for Thursday, June 21, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (800) 693-8211, Fax (502) 696-7293.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed amendment:

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

(b) The Kentucky Higher Education Assistance Authority intends to amend 11 KAR 5:160 as follows: The word "roster" shall be replaced with the word "file" throughout the above-cited administrative regulation. The Kentucky Higher Education Assistance Authority intends to amend Section 1 to provide that the eligibility verification file (EVF) is forwarded to the authority by the KGPO at each institution. Section 1(2)(a) has been added to provide that, for the fall award period, the institution submit the EVF to the authority no later than October 1 for nonquarter hour schools and by October 15 for quarter-hour schools. Section 1(2)(b) has been added to provide that, for the spring award period, the institution shall submit the EVF to the authority no later than February 15 for nonquarter-hour schools and by April 15 for quarter-hour schools. Section 2(1)(a)1 will be amended to provide that the authority shall disburse in August a pool of funds equal to the total amount of properly-paid grant funds by the school to students for the fall award period of the prior year. Section 2(1)(a)2 has been added to provide that the authority shall disburse in January a pool of funds equal to the total amount of properly-paid grant funds by the school to students for

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the spring award period of the prior year. Section 2(1)(c) has been added to provide that EVF data be processed and the grant database be updated by the authority after each award period which will allow the authority to generate disbursement reports and determine funds owed or refunds due.

(c) The necessity and function of the proposed administrative regulation are as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. This administrative regulation establishes the disbursement procedures for KHEAA grant programs.

(d) The benefits expected from the amendment are: The process by which the authority disburses funds to the institutions is changing in order to accommodate the wishes of both the schools and the students. These changes will serve to allow better portability of state grant funds among Kentucky schools by Kentucky students.

(e) The amendment will be implemented as follows: KHEAA grant funds shall be disbursed twice per academic year by the authority to educational institutions for subsequent delivery to eligible students for each academic term of enrollment. The educational institutions will certify the eligibility of grant recipients by submitting an eligibility verification file by prescribed deadlines. The authority will then reconcile the funds disbursed with those used and needed by the educational institution to deliver the grants to eligible students. Additional funds will then be provided by the authority if needed or unused funds will be returned by the educational institution.

April 30, 2002

(1) **11 KAR 15:010**, Definitions for 11 KAR Chapter 15.

(2) The Kentucky Higher Education Assistance Authority intends to amend an administrative regulation governing the subject matter listed above, particularly to include the definition for "ACT score" and "eligible high school student" and to broaden the definition of "eligible program of study" as it relates to the administration of the Kentucky Educational Excellence Scholarship Program.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, June 21, 2002, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (800) 693-8211, Fax (502) 696-7293.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 164.748(4) and 164.7885(7).

(b) The Kentucky Higher Education Assistance Authority intends to amend 11 KAR 15:010 as follows: "Base scholarship" has been added to the above-cited administrative regulation as Section 1(3). "Eligible high school student" has been added as Section 1(7). The definition of "Eligible program of study" has been broadened by adding Section 1(8)(a) to include undergraduate programs that are designated as equivalent undergraduate programs of study in an administrative regulation by the Council on Postsecondary Education.

(c) The necessity and function of the proposed administrative regulation are as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) requires the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence Scholarship Program. This administrative regulation establishes the definitions for 11 KAR Chapter 15.

(d) The benefits expected from the administrative regulation are: To ensure that the Kentucky Educational Excellence Scholarship program is awarded to qualified students.

(e) The administrative regulation will be implemented as follows: This regulation merely defines terms used in Chapter 15 of Title 11 of the Kentucky Administrative Regulations pertinent to the KEES Program.

April 30, 2002

(1) **11 KAR 15:080**, High school reporting.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an administrative regulation governing the subject matter listed above, particularly to establish a deadline for high schools to report changes in KEES data to the authority.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, June 21, 2002, at 10 a.m., at 100 Airport Road, 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, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Higher Education Assistance Authority, PO Box 798, Frankfort, Kentucky 40602-0798, (800) 693-8211, Fax 696-7293.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.



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(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is: KRS 164.748(4) and 164.7885(7).

(b) The Kentucky Higher Education Assistance Authority intends to promulgate 11 KAR 15:080 as follows: Section 1 of the above-cited administrative regulation will require that all high schools submit additions, changes, or corrections in an eligible high school student's grade point average or ACT score to the authority no later than 6 months after a student graduates.

(c) The necessity and function of the proposed administrative regulation are as follows: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.7885(7) requires the authority to promulgate administrative regulations for the administration of the Kentucky Educational Excellence Scholarship Program. This administrative regulation establishes the deadline for high schools to report additions, changes, or corrections in KEES data to the authority.

(d) The benefits expected from the administrative regulation are: Efficient and fair administration of the program so that all eligible high school students will have timely changes in their pertinent information to avoid delays in disbursements.

(e) The administrative regulation will be implemented as follows: The consideration of awards will be after changes in an eligible high school student's pertinent information are reported in accordance with this administrative regulation.

### COUNCIL ON POSTSECONDARY EDUCATION

May 10, 2002

(1) **13 KAR 1:030.** Campus security, private institutions.

(2) The Council on Postsecondary Education (CPE) is charged by the Michael Minger Act, KRS 164.948 to 164.9489, 164.9481(1)(a), 164.9487(2), 164.9485, 164.9483(1) and (2), and 227.220(3)(b), 164.9485, 164.9483(1) and (2), HB 829 (2002 Regular Session), and 227.220(3)(b), which requires private postsecondary education institutions to report campus crimes to employees, students and the public and to report annually to the Council on Postsecondary Education. The council is to approve a form for the daily security log maintained by each institution, to specify uniform reporting formats for each institution's annual report to the council, and develop a policy that authorizes the State Fire Marshal to enter in or upon the property of a postsecondary education institution licensed by the council. This administrative regulation addresses the responsibilities of private postsecondary education institutions. The 2002 General Assembly approved changes defining the word "immediate," assessing new penalties for violation of the Minger Act, and creating a special education and training fund. The Council on Postsecondary Education intends to amend an existing administrative regulation addressing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 27, 2002, 10 a.m. at the Council on Postsecondary Education, Suite 320, 1024 Capital Center Drive, Frankfort, Kentucky, Conference Room A.

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

(c) 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 calendar days prior to June 27, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request no later than June 17, 2002, to the following address: Council on Postsecondary Education, Dennis L. Taulbee, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Phone: (502) 573-1555, Fax (502) 573-1535.

(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 Council on Postsecondary Education at the address listed above.

(7) The following information relates to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the Michael Minger Act, 13 KAR 1:030. Campus security, private institutions.

(b) The administrative regulation the Council on Postsecondary Education intends to promulgate is an amendment to an existing administrative regulation. It will provide guidance on the newly defined word "immediate," address the assessment of new penalties for violation of the Minger Act, and discuss the special education and training fund.

(c) The necessity and function of the proposed administrative regulation is as follows: Conform the current administrative regulation to the requirements of HB 829 (2002 Regular Session).

(d) The benefits expected from administrative regulation are to assist public institutions in complying with the requirements of the Michael Minger Act and HB 829 (2002 Regular Session) and to provide timely information to consumers who are interested in safety and security issues on college and university campuses.

(e) This administrative regulation will be implemented by the Council on Postsecondary Education with participation by private postsecondary education institutions.

May 10, 2002

(1) **13 KAR 2:045.** Determination of residency status for admission and tuition assessment purposes.

(2) KRS 164.020(8), requires the Council on Postsecondary Education to determine tuition and approve the minimum qualifications for admission to a state-supported postsecondary education institution and authorizes the council to set different tuition amounts for residents of Kentucky and for nonresidents. In order to implement the requirement for a differential in resident and nonresident tuition, and, to distinguish between residents and nonresidents for admissions to academic programs, the council has developed rules for determining residency status. The Council on Postsecondary 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 June 25, 2002, 10 a.m. at the Council on Postsecondary Education, Suite 320, 1024 Capital Center Drive, Frankfort, Kentucky, Meeting Room B.

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

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

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2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at the public hearing, it will be held as scheduled.
- (c) 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 calendar days prior to June 25, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request no later than June 15, 2002, to the following address: Council on Postsecondary Education, Dennis L. Taulbee, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Phone: (502) 573-1555, Fax (502) 573-1535.
- (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 Council on Postsecondary Education at the address listed above.
- (7) The following information relates to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation relating to the 13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes is KRS 164.020(8).
  - (b) The administrative regulation the Council on Postsecondary Education intends to promulgate is an amendment to an existing administrative regulation. It will clarify issues about residents and nonresidents that have arisen since the administrative regulation was last amended. Two such issues are the effect of a marriage to a Kentucky residency and changes in immigration status.
  - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.020(8), requires the Council on Postsecondary Education to determine tuition and approve the minimum qualifications for admission to a state-supported postsecondary education institution and authorizes the council to set different tuition amounts for residents of Kentucky and for nonresidents. In order to implement the requirement for a differential in resident and nonresident tuition, and, to distinguish between residents and nonresidents for admissions to academic programs, the council has developed rules for determining residency status.
  - (d) The benefits expected from administrative regulation are: Ease in determining residency status for prospective and current students and the correct classification of students.
  - (e) This administrative regulation will be implemented as follows: By the Council on Postsecondary Education with participation by public and private postsecondary education institutions, the Kentucky Department of Education, and KHEAA.

May 10, 2002

- (1) **13 KAR 2:100.** Campus security, public institutions.
- (2) The Council on Postsecondary Education (CPE) is charged by the Michael Minger Act, KRS 164.948 to 164.9489, 164.9481(1)(a), 164.9487(2), 164.9485, 164.9483(1) and (2), and 227.220(3)(b), 164.9485, 164.9483(1) and (2), HB 829 (2002 Regular Session), and 227.220(3)(b), which requires public postsecondary education institutions to report campus crimes to employees, students and the public and to report annually to the Council on Postsecondary Education. The council is to approve a form for the daily security log maintained by each institution, to specify uniform reporting formats for each institution's annual report to the council, and develop a policy that authorizes the State Fire Marshal to enter in or upon the property of a postsecondary education institution licensed by the council. This administrative regulation addresses the responsibilities of public postsecondary education institutions. The 2002 General Assembly approved changes defining the word "immediate," assessing new penalties for violation of the Minger Act, and creating a special education and training fund. The Council on Postsecondary Education intends to amend an existing administrative regulation addressing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 27, 2002, 10 a.m. at the Council on Postsecondary Education, Suite 320, 1024 Capital Center Drive, Frankfort, Kentucky, Conference Room A.
- (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 5 persons, or an administrative body or association, request this public hearing and agree in writing to be present at the public hearing, it will be held as scheduled.
- (c) 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 calendar days prior to June 27, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request no later than June 17, 2002, to the following address: Council on Postsecondary Education, Dennis L. Taulbee, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Phone: (502) 573-1555, Fax (502) 573-1535.
- (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 Council on Postsecondary Education at the address listed above.
- (7) The following information relates to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation relating to the Michael Minger Act, 13 KAR 2:100. Campus security, public institutions.
  - (b) The administrative regulation the Council on Postsecondary Education intends to promulgate is an amendment to an existing administrative regulation. It will provide guidance on the newly defined word "immediate," address the assessment of new penalties for violation of the Minger Act, and discuss the special education and training fund.
  - (c) The necessity and function of the proposed administrative regulation is as follows: Conform the current administrative regulation to the requirements of HB 829 (2002 Regular Session).
  - (d) The benefits expected from administrative regulation are to assist public institutions in complying with the requirements of the Michael Minger Act and House Bill 829 (2002 Regular Session) and to provide timely information to consumers who are interested in safety and security issues on college and university campuses.
  - (e) This administrative regulation will be implemented by the Council on Postsecondary Education with participation by public postsecondary education institutions.

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OFFICE OF THE ATTORNEY GENERAL  
Consumer Protection Division

May 15, 2002

- (1) **40 KAR 2:001**, Definitions for 40 KAR Chapter 2.
- (2) Office of the Attorney General, Consumer Protection Division intends to promulgate an administrative regulation amending definitions pertaining to telephone solicitations and automated dialing equipment.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 21, 2002 at 10 a.m., at the Kentucky Personnel Cabinet Training Room, 801 Teton Trail, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kim Risinger, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 696-5387, (502) 573-8317 (Fax).
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing"; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to KRS 367.46955 is KRS 367.46983, 15.180 and 367.150.
- (b) The administrative regulation that the Consumer Protection Division intends to promulgate will amend 40 KAR 2:001.
- (c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation provides definitions for terms contained in 40 KAR Chapter 2.
- (d) The benefits expected from administrative regulation are clarification of legal requirements under the regulations.
- (e) The administrative regulation will be implemented as follows: By the Consumer Protection Division, Office of the Attorney General.

May 15, 2001

- (1) **40 KAR 2:075**, Commonwealth of Kentucky No Telephone Solicitation Calls List.
- (2) Office of the Attorney General, Consumer Protection Division intends to amend an administrative regulation governing the No Telephone Solicitation Calls List, amending the procedures for placement on the list, deadlines for placement on the list, applications to obtain the list, publication dates for the list and permissible uses of the list.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 21, 2002 at 10 a.m., at the Kentucky Personnel Cabinet Training Room, 801 Teton Trail, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kim Risinger, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 696-5387, (502) 573-8317 (Fax).
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to KRS 367.46951 to 367.46999 is KRS 367.46983, 15.180 and 367.150.
- (b) The administrative regulation that the Consumer Protection Division intends to promulgate will amend 40 KAR 2:075.
- (c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation amends the procedures set forth for the implementation requirements of KRS 367.46955(15).
- (d) The benefits expected from administrative regulation are: Improved consumer protection from telephone solicitation merchants and improved access to the No Telephone Solicitation Calls List by the regulated community.
- (e) The administrative regulation will be implemented as follows: By the Consumer Protection Division, Office of the Attorney General.

May 15, 2001

- (1) **40 KAR 2:076**, Procedures and notification of violations of KRS 367.46955 and 367.170 relative to telephone solicitation sales calls.
- (2) Office of the Attorney General, Consumer Protection Division intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 21, 2002 at 10 a.m., at the Kentucky Personnel Cabinet Training Room, 801 Teton Trail, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

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(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kim Risinger, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 696-5387, (502) 573-8317 (Fax).

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to KRS 367.46955 is KRS 367.46983, 15.180 and 367.150.

(b) The administrative regulation that the Consumer Protection Division intends to promulgate will amend 40 KAR 2:076.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets procedures for notification to the Attorney General of violations of KRS 367.46955.

(d) The benefits expected from administrative regulation are: Improved consumer protection from telephone solicitation merchants and improved understanding by the regulated community.

(e) The administrative regulation will be implemented as follows: By the Consumer Protection Division, Office of the Attorney General.

### DEPARTMENT FOR LOCAL GOVERNMENT

May 14, 2002

(1) **109 KAR 2:020.** Training incentive.

(2) The Department for Local Government intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 26, 2001, at 9 a.m., at Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 26, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard J. Ornstein, Attorney, Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601, phone (502) 573-2382; fax (502) 573-2939..

(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 for Local Government at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is: KRS 64.5275(6)(7).

(b) The administrative regulation that the Department for Local Government intends to promulgate will amend 109 KAR 2:020, Training incentive. It will allow county judge-executives, sheriffs, county clerks, jailers with a full-service jail, jailers with a life-safety jail, jailers who are part of a transportation plan, jailers who act as court bailiff and magistrates and commissioners to attend various training sessions so as to earn credit toward a 40 hour training unit. Upon the completion of each training unit, the officer shall be eligible for a \$100 training incentive, as adjusted by the Consumer Price Index with 1949 as the base year.

(c) The necessity and function of the proposed administrative regulation is as follows: To allow the various county judge-executives, sheriffs, county clerks, jailers who operates a full service jail, fiscal court magistrates and county commissioners to receive training related to their function, so as to allow these various officers to run their county governments in a more efficient and professional manner.

(d) The benefits expected from administrative regulation are: This regulation will allow for better trained county government officers, which shall in turn result in a more efficient and professional county government.

(3) The administrative regulation will be implemented as follows: The department's Division of Local Resource will mail the affected county officials information on the Training Incentive Program including, but not limited to, information on dates, times, locations, and content of the various training sessions.

### BOARD OF PHARMACY

May 15, 2002.

(1) **201 KAR 2:025.** License reinstatement.

(2) The Kentucky Board of Pharmacy intends to adopt a new administrative regulation, 201 KAR 2:025 relating to procedural and substantive requirements for the reinstatement of lapsed and disciplined licenses.

(3) A public hearing to receive oral and written comments on the proposed amendment to the existing administrative regulation has been scheduled for June 25, 2002 at 3:10 p.m. local prevailing time, at 23 Millcreek Park-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

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least 10 days prior to June 25, 2002, 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, 23 Millcreek Park, Frankfort, Kentucky 40601-9230, (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 the use of automation, technology and remote dispensing is found at KRS 315.120, 315.121(4), (5), and 315.191(1)(a).

(b) The new administrative regulation that the Board of Pharmacy intends to promulgate will address the process by which pharmacists can petition to reinstate their licenses. The proposed new administrative regulation will set criteria for examinations and continuing education as conditions precedent to reinstatement.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.120, 315.121(4), (5), and 315.191(1)(a) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the standards by which pharmacists may petition to reinstate their license.

(d) The benefit expected from the new administrative regulation is a clear and concise procedure of how to petition, what examinations must be taken and under what circumstances petitions will be considered by the board.

(e) The new administrative regulation will be implemented as follows: The board proposes to establish criteria and procedures for petitions for reinstatement of licenses that have lapsed or have been disciplined.

(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 June 16, 2002.

May 15, 2002.

(1) **201 KAR 2:260.** Automation, technology and remote dispensing.

(2) The Kentucky Board of Pharmacy intends to adopt a new administrative regulation, 201 KAR 2:260 relating to procedural and substantive requirements for the implementation and use of automation, technology and remote dispensing in pharmacy practice.

(3) A public hearing to receive oral and written comments on the proposed amendment to the existing administrative regulation has been scheduled for June 25, 2002 at 2:10 p.m. local prevailing time, at 23 Millcreek Park-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 June 25, 2002, 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, 23 Millcreek Park, Frankfort, Kentucky 40601-9230, (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 the use of automation, technology and remote dispensing is found at KRS 315.035 and 315.191(1)(a).

(b) The new administrative regulation that the Board of Pharmacy intends to promulgate will address the process by which pharmacies and pharmacists can use automation and technology and how pharmacies and pharmacists can incorporate remote dispensing into their practice. The proposed new administrative regulation will set criteria for security and verification to facilitate early identification of information that may not be valid.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.035 and 315.191(1)(a) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the standards by which pharmacies may use technology to operate.

(d) The benefit expected from the new administrative regulation is a clear and concise procedure of what can be used, how it can be used and when it can be used to facilitate pharmaceutical care.

(e) The new administrative regulation will be implemented as follows: The board proposes to establish criteria and procedures for use of automation, technology and remote dispensing devices.

(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 June 16, 2002.

## KENTUCKY BOARD OF DENTISTRY

May 3, 2002

(1) **201 KAR 8:450.** Dental hygienists services when supervising dentist not physically present. This proposed amended administrative regulation will address additional permitted functions of a dental hygienist.

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

(3) A public hearing to receive oral and written comments on the notice of intent has been scheduled for June 28, 2002 at 3 p.m., at the Board office, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223.

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

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

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

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

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least 10 days prior to June 28, 2002, 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: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223-3822, phone: (502) 423-0573, fax (502) 423-1239.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to dental hygienists is HB 467 passed by the General Assembly in 2002, KRS 313.220, and 313.260.

(b) The administrative regulation the Kentucky Board of Dentistry intends to promulgate will amend the permissible functions of dental hygienists.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will amend the permissible functions of dental hygienists.

(d) The benefit expected from this amended administrative regulation is to set standards for dental hygienists to provide dental hygiene services to patients without the dentist being present.

(e) The regulation will be implemented by the board and board staff who are charged with overseeing the regulation of the practice of dentistry.

May 3, 2002

(1) **201 KAR 8:460.** Administration of anesthesia by dental hygienists. This proposed amended administrative regulation will address fee charged to dental hygienists and to register with the board to administer block infiltration anesthesia and nitrous analgesia under the direct supervision of the dentist.

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

(3) A public hearing to receive oral and written comments on the notice of intent has been scheduled for June 28, 2002 at 4 p.m., at the Board office, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 28, 2002, 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: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223-3822, phone: (502) 423-0573, fax (502) 423-1239.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to dental hygienists is HB 467 passed by the General Assembly in 2002, KRS 313.220, and 313.260.

(b) The administrative regulation the Kentucky Board of Dentistry intends to promulgate will establish fee for certification and standards for dental hygienists to administer block and infiltration anesthesia and nitrous analgesia under the direct supervision of a dentist.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation will amend the permissible functions of dental hygienists.

(d) The benefit expected from this amended administrative regulation is to set standards for dental hygienists to administer block and infiltration anesthesia and nitrous oxide analgesia under the direct supervision of a dentists.

(e) The regulation will be implemented by the board and board staff who are charged with overseeing the regulation of the practice of dentistry.

May 3, 2002

(1) **201 KAR 8:470.** Duties of dental assistants This proposed amended administrative regulation will define certification requirements, duties, training, and standards of practice that may be performed by a dental assistant.

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

(3) A public hearing to receive oral and written comments on the notice of intent has been scheduled for June 28, 2002 at 5 p.m., at the Board office, 10101 Linn Station Road, Suite 540, Thornton Park Plaza, Louisville, Kentucky 40223.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to June 28, 2002, 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: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223-3822, phone: (502) 423-0573, fax (502) 423-1239.

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

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

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

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- (b) Persons who wish to file this request may obtain a request form from Gary Munsie at the address above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to dental assistants is HB 467 passed by the General Assembly in 2000 and KRS 313.220.
- (b) The administrative regulation the Kentucky Board of Dentistry intends to promulgate will establish standards defining certification requirements, duties, training, and standards of practice that may be performed by a dental assistant.
- (c) The necessity and function of the proposed administrative regulation is as follows: This regulation will set standards defining certification requirements, duties, training, and standards of practice that may be performed by a dental assistant.
- (d) The benefit expected from this amended administrative regulation is to set standards for dental assistants.
- (e) The regulation will be implemented by the board and board staff who are charged with overseeing the regulation of the practice of dentistry.

### BOARD OF NURSING

May 1, 2002

- (1) **201 KAR 20:070.** Licensure by examination.
- (2) The Board of Nursing intends to promulgate the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 24, 2002 at 1 p.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
  - 1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  - 2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing is not received at least 10 days prior to June 24, 2002, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 696-3938.
- (b) On a request for public hearing, a person should state:
  - 1. "I agree to attend the public hearing."; or
  - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
- (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing administrative regulation.
- (c) The necessity and function of the proposed administrative regulation is as follows: To make several minor administrative changes to requirements affecting foreign nurse applicants.
- (d) The benefits expected from the administrative regulation are: These changes will benefit the foreign nurse applicants in the application process.
- (e) The administrative regulation will be implemented as follows: Through normal agency procedures.

May 1, 2002

- (1) **201 KAR 20:095.** Inactive nurse licensure status.
- (2) The Board of Nursing intends to promulgate the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 24, 2002 at 1 p.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
  - 1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  - 2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing is not received at least 10 days prior to June 24, 2002, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 696-3938.
- (b) On a request for public hearing, a person should state:
  - 1. "I agree to attend the public hearing."; or
  - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
- (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing administrative regulation.
- (c) The necessity and function of the proposed administrative regulation is as follows: To make several administrative changes to the requirements for changing licensure status.
- (d) The benefits expected from the administrative regulation are: These changes will expedite the process and will also provide for a refresher course for those nurses who have been out of practice for at least 5 years.
- (e) The administrative regulation will be implemented as follows: Through normal agency procedures.



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May 1, 2002

- (1) **201 KAR 20:110.** Licensure by endorsement.
- (2) The Board of Nursing intends to promulgate the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 24, 2002 at 1 p.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
  1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing is not received at least 10 days prior to June 24, 2002, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 696-3938.
- (b) On a request for public hearing, a person should state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
  - (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing administrative regulation.
  - (c) The necessity and function of the proposed administrative regulation is as follows: To make a change to the foreign nurse applicant requirements and to require a refresher course for an applicant who has not practiced in the last 5 years.
  - (d) The benefits expected from the administrative regulation are: These changes will benefit the foreign nurse applicant and will also provide for a refresher course for those nurses who have been out of practice for at least 5 years.
  - (e) The administrative regulation will be implemented as follows: Through normal agency procedures.

May 1, 2002

- (1) **201 KAR 20:215.** Contact hours, recordkeeping and reporting requirements for renewal of licensure.
- (2) The Board of Nursing intends to promulgate the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 24, 2002 at 1 p.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
  1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing is not received at least 10 days prior to June 24, 2002, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 696-3938.
- (b) On a request for public hearing, a person should state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
  - (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing administrative regulation.
  - (c) The necessity and function of the proposed administrative regulation is as follows: To clarify the continuing competency requirements.
  - (d) The benefits expected from the administrative regulation are: The continuing competency requirements will be more understandable.
  - (e) The administrative regulation will be implemented as follows: Through normal agency procedures.

May 2, 2002

- (1) **201 KAR 20:225.** Reinstatement of license.
- (2) The Board of Nursing intends to promulgate the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 24, 2002 at 1 p.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
  1. It is requested in writing by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agrees, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing is not received at least 10 days prior to June 24, 2002, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 696-3938.
- (b) On a request for public hearing, a person should state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.



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

(7) Information relating to the proposed administrative regulation.

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

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

(c) The necessity and function of the proposed administrative regulation is as follows: To clarify the reinstatement requirements and to require a refresher course for a nurse who has not practiced in 5 years.

(d) The benefits expected from the administrative regulation are: Clarification of the reinstatement requirements and the requirement of a refresher course for a nurse who has not practiced in 5 years.

(e) The administrative regulation will be implemented as follows: Through normal agency procedures.

### KENTUCKY OCCUPATIONAL THERAPY BOARD

May 10, 2002

(1) **201 KAR 28:170.** Qualifications and requirements for the use of deep physical agent modalities.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 21, 2002, at 1 p.m. Eastern Time in the Board Conference Room, 911 Leawood Drive, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Nancy Black, Director, Division of Occupations and Professions, PO Box 1360, Frankfort, Kentucky 40602-0456, phone (502) 564-3296, fax (502) 564-4818.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form by writing to Nancy Black at the above address, or by calling (502) 564-3296 between the hours of 8 a.m. and 4:30 p.m. Eastern Time, Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to deep physical agent modalities is KRS 319A.070, 319A.080 and 335.170.

(b) The administrative regulation that the Kentucky Occupational Therapy Board intends to promulgate will institute a new regulation. It will identify the qualifications and training necessary for certification for deep physical agent modalities.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 335.080(4) provides that it is unlawful to utilize occupational therapy interventions involving deep physical agent modalities without first meeting the requirements specified by the board. This administrative regulation will set out the training and instruction that is necessary to allow an individual to utilize deep physical agent modalities and the requirements for obtaining the certification for use of deep physical agent modalities.

(d) The benefit expected from this administrative regulation is that the regulated community will know what training and instruction is required for certification.

(e) This administrative regulation will be implemented as follows: Licensed occupational therapist and occupational therapist assistants will be required to comply with this administrative regulation, and the Kentucky Occupational Therapy Board will enforce the administrative regulation.

### KENTUCKY BOARD OF RESPIRATORY CARE

May 10, 2002

(1) **201 KAR 29:010,** Activities under limited mandatory certification.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002 at 9:30 a.m. at the Kentucky Board of Respiratory Care Offices at 301 East Main Street, Suite 900, Lexington, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 28, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: LaDawn L. Neary, Executive Director, Kentucky Board of Respiratory Care, 301 East Main Street, Suite 900, Lexington, Kentucky 40507, phone (859)246-2747, fax (859) 246-2750.

(b) On 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 by writing to LaDawn L. Neary at the above address, or by calling (859) 246-2747 between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the subject matter is KRS 314A.205(3).

(b) The administrative regulation that the Kentucky Board of Respiratory Care intends to promulgate will amend 201 KAR 29:010, Section

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5, to update the incorporation by reference material cited as Application for Limited Mandatory Certification and Application for Mandatory Certification as a Respiratory Care Practitioner.

(c) The necessity, function, and conformity of the proposed regulation is as follows: KRS 314A.110(3) requires that a person must apply to the board in order to obtain a limited mandatory certification. KRS 314A.205(3) dictates that the board shall promulgate administrative regulations to carry about the provisions of KRS Chapter 13A. This regulation names the specific applications necessary for completion in order to obtain either a limited mandatory certification or temporary mandatory certification.

(d) The benefit expected from this administrative regulation is that the updates to the Application for Limited Mandatory Certification will incorporate the new section of 201 KAR 29:010, Section 1, which requires documentation of competency in specific practice areas. The updates to the Application for Mandatory Certification will indicate the new location and phone numbers of the board offices. Both updates will provide applicants with contact information and clarification of application requirements.

(e) The administrative regulation will be implemented as follows: New applications will be provided to requesting applicants and missing information to the Application for Limited Mandatory Certification will be included with 8/94 version until cycled through to all new copies.

May 10, 2002

(1) **201 KAR 29:060.** Continuing education requirements for persons on inactive status; wavier.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002 at 9:30 a.m. at the Kentucky Board of Respiratory Care Offices at 301 East Main Street, Suite 900, Lexington, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 28, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: LaDawn L. Neary, Executive Director, Kentucky Board of Respiratory Care, 301 East Main Street, Suite 900, Lexington, Kentucky 40507, phone (859) 246-2747, fax (859) 246-2750.

(b) On 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 by writing to LaDawn L. Neary at the above address, or by calling (859) 246-2747 between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the subject matter is KRS 314A.205(3).

(b) The administrative regulation that the Kentucky Board of Respiratory Care intends to promulgate will amend 201 KAR 29:060 to include military duty as case for granting a waiver of the minimum continuing education requirements or extensions of time within which to fulfill the requirements.

(c) The necessity, function, and conformity of the proposed regulation is as follows: KRS 314A.115 requires a person applying for renewal of mandatory certification show evidence of continuing education in respiratory care as prescribed in administrative regulations. KRS 314A.205(3) dictates that the board shall promulgate administrative regulations to carry about the provisions of KRS Chapter 13A. This regulation delineates the continuing education requirements for mandatory certificate holders on inactive status and the circumstances under which waivers or extensions for the requirements may be granted.

(d) The benefit expected from this administrative regulation is that those practitioners who have been serving this country during military duty and unable to accumulate the required continuing education hours will still have the opportunity to maintain their mandatory certification in order to practice respiratory care in the Commonwealth of Kentucky.

(e) The administrative regulation will be implemented as follows: Persons requesting a waiver or extension for continuing education will submit request to the board for their review and decision based on guidelines of the administrative regulation.

## DEPARTMENT OF AGRICULTURE

May 14, 2002.

(1) **302 KAR 20:250.** Avian influenza.

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

(3) A public hearing to receive oral and written comments has been scheduled for Friday, June 21, 2002, at 11 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 21, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 20:250 is KRS 257.030.

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- (b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will establish requirements for entry of domestic poultry into Kentucky to prevent the introduction and spread of the Avian Influenza virus to Kentucky domestic poultry.
- (c) The necessity and function of the proposed administrative regulation is as follows: Same as (b).
- (d) The benefits expected from the proposed administrative regulation are: Monitor the entry of domestic poultry into the state to prevent the introduction and spread of the Avian Influenza virus.
- (e) The administrative regulation will be implemented as follows: All domestic poultry producers outside the state will be required to comply with this administrative regulation before bring domestic poultry into Kentucky.

April 24, 2002

- (1) **302 KAR 25:006**. Repealer.
- (2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 11 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.
- (b) On a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Department of Agriculture at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 25:006, Repealer, is KRS Chapter 260.
- (b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will repeal the following administrative regulations: 302 KAR 25:005, Definitions; 302 KAR 25:015, Prohibited marketing practices; 302 KAR 25:025, Fair competition in milk sales; equipment prohibitions; 302 KAR 25:035, Discounts; 302 KAR 25:045, Stamps, coupons and redemption certificates; 302 KAR 25:055, Special prices prohibited; 302 KAR 25:065, Sales to governmental agencies; 302 KAR 25:075, Price schedule filing; 302 KAR 25:085, Retailer defined; and 302 KAR 25:095, Violations; procedure and penalties.
- (c) The necessity and function of the proposed administrative regulation is as follows: Same as (b).
- (d) The benefits expected from the proposed administrative regulation are: Repeals administrative regulations no longer needed; milk marketing law ruled unconstitutional.
- (e) The administrative regulation will be implemented as follows: Administrative regulations will be repealed.

May 2, 2002

- (1) **302 KAR 40:010**. Organic agricultural product certification.
- (2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 8 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.
- (b) On a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing" or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Department of Agriculture at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 40:010 is 2002 Ky. Acts ch. 209.
- (b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will amend 302 KAR 40:010, Organic agricultural product certification. It will repeal current organic regulations and adopt federal organic regulations.
- (c) The necessity and function of the proposed administrative regulation is as follows: Same as (b).
- (d) The benefits expected from the proposed administrative regulation are: Allow producers to continue to sell products as certified organic.
- (e) The administrative regulation will be implemented as follows: Producers will be required to comply with federal regulations adopted in this administrative regulation.

April 24, 2002

- (1) **302 KAR 75:011**. Repealer.
- (2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 10 a.m. at the Department of

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Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 75:011, Repealer, is KRS 363.590.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will repeal the following regulations: 302 KAR 75:010, Application; 302 KAR 75:020, Definitions; 302 KAR 75:030, Identity; 302 KAR 75:050, Responsibility; 302 KAR 75:060, Quantity, consumer packages; 302 KAR 75:070, Quantity, nonconsumer packages; 302 KAR 75:080, Prominence and placement, consumer and nonconsumer packages; 302 KAR 75:100, Specific consumer commodities; 302 KAR 75:110, Exemptions; and 302 KAR 75:120, Allowable variations.

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

(d) The benefits expected from the proposed administrative regulation are: Current administrative regulations are no longer needed; uniform standards for packaging and labeling will be adopted in a new administrative regulation.

(e) The administrative regulation will be implemented as follows: Current administrative regulations will be repealed and replaced by a new administrative regulation which adopts uniform standards of packaging and labeling.

April 24, 2002

(1) **302 KAR 75:130.** Uniform standards for packaging and labeling.

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 10 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 75:130, Uniform standards for packaging and labeling, is KRS 363.590.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will establish uniform standards for packaging and labeling. It will incorporate uniform standards for packaging and labeling as adopted by the National Conference on Weights and Measures, Inc.

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

(d) The benefits expected from the proposed administrative regulation are: Adopts uniform standards for packaging and labeling.

(e) The administrative regulation will be implemented as follows: All packaging and labeling will be required to conform to these standards.

April 24, 2002

(1) **302 KAR 76:011.** Repealer.

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 10 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 76:011, Repealer, is KRS 363.590.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will repeal the following regulations: 302 KAR 76:005, Food products; 302 KAR 76:015, Coatings and sealants; 302 KAR 76:025, Softwood lumber; 302 KAR 76:035, Peat and peat moss; 302 KAR 76:045, Roofing materials; 302 KAR 76:055, Railroad car tare weights; 302 KAR 76:065, Machine vended commodities; 302 KAR 76:075, Combination quantity declarations; and 302 KAR 76:085, Presentation of price.

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

(d) The benefits expected from the proposed administrative regulation are: Current administrative regulations are no longer needed; uniform standards for method of sale will be adopted in a new administrative regulation.

(e) The administrative regulation will be implemented as follows: Current administrative regulations will be repealed and replaced by a new administrative regulation which adopts uniform standards of method of sale.

April 24, 2002

(1) **302 KAR 76:100. Method of sale.**

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 10 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 76:100, Method of sale, is KRS 363.590.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will establish uniform standards for method of sale as adopted by the National Conference on Weights and Measures, Inc.

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

(d) The benefits expected from the proposed administrative regulation are: Adopts uniform standards for method of sale.

(e) The administrative regulation will be implemented as follows: All sales included in this administrative regulation be required to conform to these standards.

April 24, 2002

(1) **302 KAR 77:010. Tobacco sales commission fees.**

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 10 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 77:010, Tobacco sales commission fees, is KRS 248.300.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will amend 302 KAR 77:010. It will make technical corrections to the administrative regulation.

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

(d) The benefits expected from the proposed administrative regulation are: Will correct name of division.

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(e) The administrative regulation will be implemented as follows: Corrects name of division.

April 24, 2002

(1) **302 KAR 78:010**. Tobacco sales to persons under the age of eighteen (18).

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 10 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 78:010, Tobacco sales to persons under the age of eighteen (18), is KRS Chapter 438.340.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will amend 302 KAR 78:010, Tobacco sales to persons under the age of eighteen (18). It will make technical changes to administrative regulation.

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

(d) The benefits expected from the proposed administrative regulation are: Corrects mailing address for written notification of sales of tobacco to persons under the age of eighteen (18).

(e) The administrative regulation will be implemented as follows: Corrects mailing address listed in administrative regulation.

April 24, 2002

(1) **302 KAR 79:010**, Testing and inspection program.

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 10 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 79:010 is KRS 363.900 to 908, 16 CFR 306.12, 40 CFR 80.27.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will amend 302 KAR 79:010, Testing and inspection program. It will change the date that civil penalties are due; changes the date for when a stop-sale order may be issued; authorizes stop-sale order for failure to pay license fee; makes technical changes to ASTM standards; and makes technical corrections to administrative regulation.

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

(d) The benefits expected from the proposed administrative regulation are: Improves guidelines of testing and inspection program of motor fuels.

(e) The administrative regulation will be implemented as follows: All motor fuels vendors will be required to comply with standards contained in administrative regulation.

April 24, 2002

(1) **302 KAR 80:010**. Scanners.

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 10 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, 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: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 80:010, Scanners, is KRS 363.590.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will establish uniform standards for scanners. It will incorporate uniform standards for scanners as adopted by the National Conference on Weights and Measures, Inc.

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

(d) The benefits expected from the proposed administrative regulation are: Adopts uniform standards for scanners.

(e) The administrative regulation will be implemented as follows: All scanners will be required to conform to these standards.

April 24, 2002

(1) **302 KAR 81:010**, Definitions.

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 10 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 81:010 is KRS 363.590.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will define terms used in 302 KAR 81, Commercial weighing and measuring devices.

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

(d) The benefits expected from the proposed administrative regulation are: Will clarify and better assist with interpretation of administrative regulations.

(e) The administrative regulation will be implemented as follows: Terms used in 302 KAR Chapter 81 will be defined.

April 24, 2002

(1) **302 KAR 81:020**, Certificate of conformance.

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

(3) A public hearing to receive oral and written comments has been scheduled for June 24, 2002, at 10 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 81:020 is KRS 363.590.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will require a device to be traceable to an active certificate of conformance prior to its installation.

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

(d) The benefits expected from the proposed administrative regulation are: Provides a record of weighing and measuring device.



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(e) The administrative regulation will be implemented as follows: It will require an active certificate of conformance for a device prior to installation.

April 24, 2002

(1) **302 KAR 81:030**, Prohibited acts and exemptions.

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 10 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 81:030 is KRS 363.590.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will set out prohibited acts and exemptions for devices.

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

(d) The benefits expected from the proposed administrative regulation are: That all devices installed in Kentucky meet the regulatory requirements.

(e) The administrative regulation will be implemented as follows: Sets out prohibited acts and exemptions for devices.

April 24, 2002

(1) **302 KAR 81:040**, Participating laboratory and agreements.

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

(3) A public hearing to receive oral and written comments has been scheduled for Monday, June 24, 2002, at 10 a.m. at the Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to June 24, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-5126, ext. 223, fax (502) 564-5016.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 302 KAR 81:040 is KRS 363.590.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will authorize the operation of a participating laboratory as part of the National Type Evaluation Program.

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

(d) The benefits expected from the proposed administrative regulation are: Establishes a laboratory where type evaluations can be performed on commercial weighing and measuring devices.

(e) The administrative regulation will be implemented as follows: The Director of Regulation and Inspection may enter into cooperative agreements to operate the laboratory.

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

April 18, 2002

(1) **401 KAR 63:105**, Requirements for control technology determinations for major sources in accordance with Clean Air Act section 112(g) and (j). The subject matter of the regulation is the determination of case-by-case Maximum Achievable Control Technology (MACT) standards for sources subject to the federal Clean Air Act Amendments of 1990.

(2) The Division for Air Quality 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 proposed amendments to the administrative regulation has been scheduled



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for June 27, 2002, at 10 a.m. (Eastern Time), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested at least 10 calendar days prior to June 27, 2002, in writing, by 5 persons, or by an administrative body, or by an association having at least 5 members, provided that a minimum of 5 persons, or one person representing an administrative body or association, agree 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 calendar days prior to June 27, 2002, the public hearing will be canceled.

(c) Consideration will be given to all comments received or made prior to the adjournment of the public hearing, or prior to the cancellation of the public hearing. Written comments may be submitted to the address listed in (5)(a) below.

(d) The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the public hearing, should be made to the contact person listed in (5)(a) below at least 10 calendar days prior to the public hearing.

(5)(a) Persons wishing to request a public hearing should mail or FAX this information to Carl Millanti, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, fax (502) 573-3787, phone (502) 573-3382, ext. 343.

(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 may file a request to be informed by the administrative body.

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Division for Air Quality intends to promulgate will amend and update an existing regulation.

(c) The necessity and function of the proposed amendment to this administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The administrative regulation that the cabinet is proposing to amend, 401 KAR 63:105, incorporates by reference the federal requirements for case-by-case MACT determinations as published in the Code of Federal Regulations, 40 CFR 63.40 to 63.56, July 1, 1997. This regulation has been in effect since 1999 and the cabinet desires to amend it to conform with the recent revisions to the federal rule as published in the Federal Register, 67 FR 16582 (April 5, 2002).

(d) The expected benefit from the proposed amendment to this administrative regulation is that the cabinet and affected sources will not be required to commit staff and resources to making case-by-case MACT determinations until May 2004. It is anticipated that the U.S. Environmental Protection Agency will have finalized all MACT standards by that date and that these determinations will not be necessary.

(e) The proposed administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation amendment, the amended administrative regulation will be implemented as part of the cabinet's air quality program.

### **PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund**

May 13, 2002

(1) **415 KAR 1:140**, Laboratory certification.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Tuesday, June 25, 2002 at 9 a.m., at the Office of the Petroleum Storage Tank Environmental Assurance Fund (large conference room, 2nd floor), 81 C Michael Davenport Boulevard, Frankfort, Kentucky 40601. 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 to be borne by the requesting party.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to Tuesday, June 25, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following person and address: James Brannen, Legal Counsel, Office of the Petroleum Storage Tank Environmental Assurance Fund, 81 C Michael Davenport Boulevard, Frankfort, Kentucky 40601, (502) 564-5981, Fax (502) 564-0094.

(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 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 form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the address listed above.

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 224.60-130(2)(a).

(b) This is amendment to an existing regulation governing certification of laboratories that contract with owner or operators of underground storage tanks to perform analytical testing. The amendment to the regulation will:

1. Address applicability of the regulation;
2. Address the requirements by which analytical laboratories will demonstrate current accreditation;
3. Address guidelines for renewal and maintenance of certification;
4. Incorporate by reference national environmental laboratory accreditation program.

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(c) The necessity and function of this regulation is as follows: The office is authorized pursuant to KRS 224.60-130(2)(a) to promulgate regulations to administer the fund. That authorization includes promulgating criteria for establishing laboratory certification to be eligible for fund participation.

(d) The benefits expected from the regulation are: This amendment to the regulation will update the certification process and provide notice to owners/operators of the requirements necessary to maintain compliance with this aspect of the office's legislative mandate.

(e) The administrative regulation will be implemented as follows: Office personnel will review certifications filed with the office to ensure compliance with this regulation's requirements. Owners or operators who fail to comply with the requirements of the regulations will not be reimbursed by the fund for costs relating to analytical testing and corrective action.

### JUSTICE CABINET Department of Corrections

May 14, 2002

(1) **501 KAR 6:120**, Blackburn Correctional Complex.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 21, 2002, at 9 a.m., in the Conference Room, at the Office of General Counsel, 2439 Lawrenceburg 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 June 21, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Jack Damron, Deputy General Counsel, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

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

1. Extraordinary Occurrence Reports (BCC 01-07-01) shall be amended to:

- a. include a new CPP as a reference;
- b. include adding escapes to the order completing the Extraordinary Occurrence Form;
- c. conforms to KRS Chapter 13A requirements.

2. Relationships with Public, Media and Other Agencies (BCC 01-13-01) shall be amended to:

- a. Include to utilizing the correct form when media want to take a photograph of an inmate;
- b. Conforms to KRS Chapter 13A requirements.

3. Fiscal Responsibility (BCC 02-02-01) shall be amended to:

- a. Deletion of petty cash in the procedures for bonding all appropriate staff;
- b. Conforms to KRS Chapter 13A requirements.

4. Fiscal Management: Budget (BCC 02-02-04) shall be amended to:

a. Deletion financial reports being forwarded to Corrections Central Office and Warden receiving a computerized printout of the financial status of the facility from the Finance and Administration Cabinet;

b. Conforms to KRS Chapter 13A requirements.

5. Inmate Personal Accounts (BCC 02-07-01) shall be amended to:

- a. Additional CPP to the reference section;
- b. Include a Western Union Quick Collect as a form of funds received from an inmate family members;
- c. Include the amount of money or transferred funds shall not exceed from an immediate family member;
- d. To include definition of an immediate family member;
- e. Conforms to KRS Chapter 13A requirements.

6. Emergency Preparedness Plan Manual (BCC 08-03-01) shall be amended to:

a. Include manual numbers to all assigned manual holders and to add an additional manual to the Institutional Training Coordinator's Office;

b. Conforms to KRS Chapter 13A requirements.

7. Personal Hygiene Items (BCC 12-02-01) shall be amended to:

- a. To update the amount of personal items an inmate may receive;
- b. Conforms to KRS Chapter 13A requirements.

8. Clothing, Linens, Bedding Issuance and Shower Facilities (BCC 12-02-02) shall be amended to:

- a. The deletion of inmates receiving personal clothing through the mail;
- b. Conforms to KRS Chapter 13A requirements.

9. Sick Call and Pill Call (BCC 13-01-01) shall be amended to:

a. Include staff and inmate shall sign on the appropriate space on the inmate's individual medication records; for control or psychotropic medications;

b. Include all other medication dosages shall be signed by the staff member administering the medication on the inmates' medical administration record;

c. Conforms to KRS Chapter 13A requirements.

10. Health Care Practices (BCC 13-06-01) shall be amended to:

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- a. To include licensed practical nurses working at the institution;
- b. Conforms to KRS Chapter 13A requirements.
- 11. Blackburn Education Center (BCC 20-01-01) shall be amended to:
  - a. To update all school employees shall be evaluated by the Kentucky Community and Technical College System;
  - b. Conforms to KRS Chapter 13A requirements.
- 12. Educational Program Planning (BCC 20-05-01) shall be amended to:
  - a. replace any reference of Kentucky Tech Blackburn with Central Kentucky Technical College - Blackburn Campus;
  - b. conforms to KRS Chapter 13A requirements.
- (c) The necessity and function of the proposed administrative regulation is as follows:
  - 1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
  - 2. This administrative regulation updates operating procedures at the Blackburn Correctional Complex to comply with KRS Chapter 13A and to reflect current operating procedures.
  - (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.
  - (e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

May 14, 2002

- (1) **501 KAR 6:150**, Eastern Kentucky Correctional Complex.
- (2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 21, 2002, at 9 a.m., in the Conference Room, at the Office of General Counsel, 2439 Lawrenceburg 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 June 21, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Jack Damron, Deputy General Counsel, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.
- (b) On a request for public hearing, a person shall state:
  - 1. "I agree to attend the public hearing."; or
  - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.
  - (b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:150, as follows:
    - 1. Institutional Legal Assistance (EKCC 01-01-01) shall be deleted as it is contained in CPP 1.1.
    - 2. Crime Scene Camera (EKCC 01-06-02) shall be amended: to comply with KRS Chapter 13A requirements; to change who trains staff on the camera equipment; to add areas where cameras are located and who is responsible for them; to add instructions on the use of video and digital cameras and to revise proper storage of photographs and video tapes.
    - 3. Duty Officers Responsibilities (EKCC 01-09-01) shall be amended to comply with KRS Chapter 13A requirements; to change the duty officer and maintenance duty officers responsibilities; to change the response time required for duty officers and maintenance duty officers; and to delete information found in CPP 1.9.
    - 4. Organization of Operations Manual (EKCC 01-13-01) shall be revised to comply with the requirements of KRS Chapter 13A.
    - 5. Formulation and Revision of EKCC Operation Procedure (EKCC 01-13-03) shall be revised to comply with the requirements of KRS Chapter 13.
    - 6. Inmate Canteen (EKCC 02-01-02) shall be revised to comply with the requirements of KRS Chapter 13A; to delete information found in CPP 2.1 or KRS 196.270; and to change the current markup of items sold in the inmate canteen.
    - 7. Fiscal Management: Agency Funds (EKCC 02-02-01) shall be revised to comply with the requirements of KRS Chapter 13A; to delete references to the Imprest Cash Fund that no longer exists; to delete reference to sale of meal tickets that is no longer done; to delete the requirement that books be maintained by an employee of the inmate canteen; and to include a provision for additional fund raising for the staff canteen.
    - 8. Fiscal Management: Accounting Procedures (EKCC 02-13-01) shall be revised to comply with the requirements of KRS Chapter 13A; to delete references to the purchasing of meal tickets.
    - 9. Screening Disbursements from Inmate Personal Accounts (EKCC 02-14-01) shall be revised to comply with the requirements of KRS Chapter 13A; to exclude purchases made from department stores or catalogue centers; to delete withdrawing funds for art projects; and to include that interest earned on personal accounts accrues to the inmate.
    - 10. Minimum Security Unit: Operating Procedures and Living Conditions (EKCC 18-13-04) is a new policy which details the procedures in the Minimum Security Unit.
    - 11. PATHFINDERS (EKCC 24-02-01) is a new policy which outlines the criteria for the Pathfinders Program.
  - (c) The necessity and function of the proposed administrative regulation is as follows:
    - 1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
    - 2. This administrative regulation updates operating procedures at the Eastern Kentucky Correctional Complex to comply with KRS Chapter 13A and to reflect current operating procedures.
    - (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

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

TRANSPORTATION CABINET

May 15, 2002

(1) **603 KAR 4:035**, Logo signs; placement along fully-controlled and partially-controlled access highways.

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to this administrative regulation that will amend the criteria for eligibility and the definition of tourist activity sufficiently to allow shopping centers of regional significance to qualify for logo signs.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002, 10 a.m. local prevailing time, State Office Building, 4th Floor Conference Room, 501 High Street, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior, June 18, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should contact Hollie Spade at: phone (502) 564-7650, fax (502) 564-5238, or e-mail holland.spade@mail.state.ky.us. A written request may be mailed to the Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(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 Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to this administrative regulation is KRS 177.0736.

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

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

(d) The benefit expected from the administrative regulation is to provide directional information regarding regionally-significant shopping centers increasing business for those centers and making access for citizens more efficient.

(e) This amendment to administrative regulation will be implemented by the Transportation Cabinet in accordance with KRS Chapter 13A.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Hollie Spade at the above-mentioned address no later than 10 days prior to the scheduled hearing date.

May 15, 2002

(1) **603 KAR 4:040**, TODS signs; placement on public roads other than interstates or parkways.

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to this administrative regulation that will expand the provisions regarding "tourist activity" and "tourist attraction" to accommodate signage related to regionally-significant shopping malls.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002, 10 a.m., local prevailing time, 501 High Street, State Office Building, 4th Floor Conference Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior, June 18, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should contact Hollie Spade at: phone (502) 564-7650, fax (502) 564-5238, or e-mail holland.spade@mail.state.ky.us. A written request may be mailed to the Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(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 Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to this administrative regulation is KRS 189.337.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend the regulation to expand the provisions regarding "tourist activity" and "tourist attraction" to accommodate signage for regionally-significant shopping malls.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 189.337 requires the Department of Highways to establish standards for the placement of signs within highway right-of-way of a public road. The Transportation Cabinet has promulgated 603 KAR 5:050 which deals with all traffic control devices by incorporating the Manual on Uniform Traffic Control Devices by reference. The Manual on Uniform Traffic Control Devices allows for the erection of tourist oriented directional signs (TODS) to provide directional information for tourist activities offering goods and services that are of significant interest to the traveling public within certain parameters, but requires each jurisdiction to establish policies for those areas not covered in the manual. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of TODS. The criteria included in this administrative regulation are consistent with the guidelines set forth in the Manual on Uniform Traffic Control Devices.



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current list of roads designated as part of the extended weight coal or coal by-products haul road system. Further this regulation establishes procedures for local governing bodies seeking consideration of addition or deletion of particular roads from the extended weight coal or coal by-products haul road system. The current extended weight system as designated by the Transportation Cabinet shall include road segments reported as having 50,000 tons or more of coal or coal by-products transported over them during the preceding calendar year as well as bridges posted for lower weight limits.

(d) This amendment to the administrative regulation will allow the cabinet to update the list of roads that are approved as part of the extended weight coal haul system as changes occur by official order and will make the current list accessible to users of the system.

(e) The Transportation Cabinet will implement the amendment to this administrative regulation in accordance with KRS Chapter 13A.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Hollie Spade at the above-mentioned address no later than 10 days prior to the scheduled hearing date.

May 15, 2002

(1) **603 KAR 5:301**, Primary road system classification.

(2) The Kentucky Transportation Cabinet intends to promulgate an amendment to this administrative regulation that will allow the cabinet to update weight classification for roads on its website.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 24, 2002, 10 a.m. local prevailing time, State Office Building, 501 High Street, 10th Floor, General Counsel Conference Room, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior June 14, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should contact Hollie Spade at: phone (502) 564-7650, fax (502) 564-5238, or e-mail [holland.spade@mail.state.ky.us](mailto:holland.spade@mail.state.ky.us). A written request may be mailed to the Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(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 Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to designation of weight limits on roads is KRS 189.222.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend the provisions related to changes in the weight classification list so that the list can be updated by Official Order and on the website.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 189.222 authorizes the Secretary of the Transportation Cabinet to establish by official order reasonable weight (mass) limits for all highways included in the state-maintained system of highways. This administrative regulation is promulgated to identify and incorporate by reference the Official Order and Guidance Manual setting forth each road in the state-maintained system and to indicate the classification of each. The classification of each highway segment in conjunction with 603 KAR 5:066 establishes the weight (mass) limit for trucks using each road segment.

(d) The benefits expected from the administrative regulation: This will allow the cabinet to increase weight classification more efficiently.

(e) This amendment to administrative regulation will be implemented by the Transportation Cabinet in accordance with KRS Chapter 13A.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Hollie Spade at the above-mentioned address no later than 10 days prior to the scheduled hearing date.

**CABINET FOR WORKFORCE DEVELOPMENT  
Department for Training and Reemployment**

April 24, 2002

(1) **790 KAR 1:050**, Grievances and appeals.

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

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for June 25, 2002 at 1 p.m. in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 25, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mike Harmon, Department for Training and Reemployment, 209 St. Clair, Frankfort, Kentucky 40601, phone (502) 564-5360, fax (502) 564-8974, e-mail: [MikeM.Harmon@mail.state.ky.us](mailto:MikeM.Harmon@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 Department for Training and Reemployment at the address listed above.



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(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to grievances and appeals under the Workforce Investment Act of 1998, 29 USC Section 2801, et seq. is KRS 151B.020(6).

(b) The administrative regulation that the Department for Training and Reemployment intends to promulgate will not amend an existing administrative regulation. It will set forth the grievance and appeals procedures for activities related to the Workforce Investment Act of 1998, 29 USC Section 2801, et seq.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The regulation is necessary to comply with federal law and to provide notice of the administrative process for resolution of appeals and grievances under the Workforce Investment Act of 1998, 29 USC Section 2801, et seq.

(d) The benefits expected from administrative regulation are: Affected parties will have adequate notice of the procedure for resolving appeals and grievances under the Workforce Investment Act of 1998, 29 USC Sec. 2801, et seq.

(e) The Department for Training and Reemployment within the Cabinet for Workforce Development will be responsible for implementing the proposed administrative regulation.

### KENTUCKY DEPARTMENT OF WORKERS' CLAIMS

April 18, 2002

(1) **803 KAR 25:010**, Procedure for adjustments of claims.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 27, 2002, at 10 a.m. at the Department of Workers' Claims, Prevention Park, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to June 27, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Prevention Park, Frankfort, Kentucky 40601, ATTN: Carla H. Montgomery, (502) 564-5550, fax (502) 564-5934.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 342.260 and 342.270(7).

(b) The administrative regulation that the Department of Workers' Claims intends to promulgate will amend an existing administrative regulation. The amendment changes the time period for holding a benefit review conference and eliminates the necessity for a prehearing. An amendment will also extend the time to object to evidence filed with the Form 101 until an employer has filed a Form 111. The department will allow the medical reports to be filed with an application that are not on the Form 107 or other forms as has always been the practice. The department will eliminate the issuance of \$500 sanctions by administrative law judges. Appeals to the Workers Compensation Board will require a notice of appeal and 30 days later a brief. The department will also amend this regulation to conform to House Bill 348 dealing with black lung claims.

(c) The necessity and function of the proposed administrative regulation is as follows: The regulation is necessary to set forth procedures for the prompt and fair adjudication of workers compensation claims. The amendments will assist in providing efficient and adequate adjudication of workers compensation claims. The amendments will eliminate unnecessary costs and time restraints which impede the due process for claimants and employers. The amendments will bring the administrative regulation into compliance with statutory authority.

(d) The benefits expected from the administrative regulation are: The amendments will eliminate travel expense and time constraints on claimants, attorneys and administrative law judges. The administrative law judges alone could save over \$50,000 travel expenses per year. Claimants can file their claim without the necessity of a medical report on Form 107 which can be costly. The employer will have adequate time to object to admitted evidence with an application. The benefit review conference will be held at a time after evidence is gathered and a more meaningful and appropriate settlement proposal can be made. The chance of settlement will greatly increase. Appeals to the Workers Compensation Board can be more thoroughly researched and prepared.

(e) The administrative regulation will be implemented as follows: Because the amendments have been promulgated by emergency, there should be no significant changes to implement the ordinary regulation. Claims will continue to be handled with the same staff and budget.

### KENTUCKY PUBLIC SERVICE COMMISSION

May 8, 2002

(1) **807 KAR 5:063**, Filing requirements and procedures for proposals to construct antenna towers for cellular telecommunications services or personal communications services

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation is scheduled for June 24, 2002, at 11 a.m., Eastern Daylight Time, in Hearing Room 1, 211 Sower Boulevard, 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 calendar days prior to June 24, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Deborah T. Eversole, Gen-

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eral Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (501) 564-7279.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the administrative regulation is HB 270, to be codified in KRS Chapters 100 and 278. HB 270 repeals numerous provisions of law pursuant to which 807 KAR 5:063 was previously promulgated. This amendment will bring 807 KAR 5:063 into conformity with existing law.

(b) The proposed amendment may be summarized as follows: The provisions of the regulation whose statutory authority has been repealed will be deleted; provisions for notifying the commission of planning commission approval of a tower site will be added; provisions concerning local public hearings will be added.

(c) The benefits expected of this administrative regulation are that it will fully implement new statutory requirements and procedures for antenna tower siting.

(d) The necessity and function of the proposed administrative regulation is as follows: HB 270, which contains an emergency clause and is thus currently effective, deletes statutory provisions mandating commission proceedings on applications concerning cellular antenna towers proposed to be located in areas under the jurisdiction of a planning commission. HB 270 also provides for two additional local procedures: public hearings and notices to the PSC concerning planning commission approvals. This administrative regulation is necessary to implement the changes to the law governing cellular antenna tower proceedings.

(e) The proposed amendment will eliminate provisions of the administrative regulation that are now obsolete and will provide procedures to implement new statutory requirements.

(f) The administrative regulation will be implemented and enforced as soon as it becomes effective.

**Kentucky State Board on Electric Generation and Transmission Siting**

April 24, 2002

(1) **807 KAR 5:100.** Board application fees. Establishing application fees for persons seeking construction certificates from the Kentucky State Board on Electric Generation and Transmission Siting.

(2) The Kentucky State Board on Electric Generation and Transmission Siting intends to promulgate a new administrative regulation governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation is scheduled for June 25, 2002 at 9 a.m., Eastern Daylight Time, in Hearing Room 1, 211 Sower Boulevard, 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 calendar days prior to June 25, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Angela Curry, Staff Attorney, Division of the General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (501) 564-7279.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the administrative regulation flows from SB 257, to be codified in KRS Chapter 278, which establishes the Kentucky State Board on the Electric Generation and Transmission Siting. SB 257, Section 4(5) provides that the board shall establish application fees by promulgating administrative regulations to pay the expenses associated with the board's review of applications.

(b) The administrative regulation will require persons seeking permits to construct merchant electric generating facilities to pay the board an initial application fee of \$1000 per megawatt of generating capacity up to a maximum of \$200,000. For nonregulated transmission lines, the board will charge an applicant \$50 per kilovolt of rated capacity per mile of length to a maximum of \$200,000. If a majority of board members find that this initial fee is insufficient to pay the board's expenses, the board will assess a supplementary fee to cover the additional cost.

(c) The necessity and function of the proposed administrative regulation is as follows: SB 257, Section 4(5), directs the board to establish application fees for a construction certificate. It directs the board to promulgate administrative regulations prescribing fees to pay expenses associated with its review of applications. This section further directs board members to assess supplemental application fees if a majority of board members find that an applicant's initial fees are insufficient to pay the board's expenses. The board proposes to promulgate this administrative regulation in order to fully implement these statutory requirements.

(d) The proposed administrative regulation will yield several benefits. The proposed regulation will fully implement SB 257. Applicants seeking construction permits from the board will have a clear understanding of the costs associated with obtaining the permit and the board will have adequate resources to conduct a thorough analysis of each application.

(e) The administrative regulation will be implemented and enforced as soon as it becomes effective.

April 24, 2002

(1) **807 KAR 5:110.** Board proceedings. Establishing procedural rules for hearings convened by the Kentucky State Board on Electric Generation and Transmission Siting.

(2) The Kentucky State Board on Electric Generation and Transmission Siting and the Environment intends to promulgate a new adminis-



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trative regulation governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation is scheduled for June 25, 2002 at 9 a.m., Eastern Daylight Time, in Hearing Room 1, 211 Sower Boulevard, 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 calendar days prior to June 25, 2002, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Angela Curry, Staff Attorney, Division of the General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 40602, phone (502) 564-3940, fax (501) 564-7279.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the administrative regulation flows from HB 257, to be codified in KRS Chapter 278, which establishes the Kentucky State Board on the Electric Generation and Transmission Siting and the Environment. SB 257 at Section 2(3) and Section 7(2) requires the board to promulgate administrative regulations implementing SB 257 and establishing board procedures.

(b) This administrative regulation establishes procedures for board applications.

(c) The necessity and function of the proposed administrative regulation is as follows: SB 257 requires the board to promulgate administrative regulations establishing rules to govern procedures on its applications. This administrative regulation is necessary to fully implement SB 257, and will function to aid the board and the parties to its proceedings on applications brought before it.

(d) The proposed administrative regulation will ensure that board proceedings are conducted in an orderly and prompt manner.

(f) The administrative regulation will be implemented and enforced as soon as it becomes effective.

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

May 6, 2002

(1) **808 KAR 12:040**, Regulation of charges for services rendered in processing and closing real estate loans to consumers.

(2) The Department of Financial Institutions of the Cabinet for Public Protection and Regulation of the Commonwealth of Kentucky intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, June 27, 2002, at 10 a.m., local prevailing time, at the Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, 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 Thursday, June 27, 2001, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William E. Doyle, Staff Attorney, Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 573-3390, fax (502) 573-8787.

(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 Financial Institutions 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 294.120(1),(2), and (6), and 294.140(1).

(b) The administrative regulation that the Department of Financial Institutions will promulgate, 808 KAR 12:040, Regulation of charges for services rendered in processing and closing real estate loans to consumers, will regulate the amount that may be charged in connection with the processing of a mortgage loan procured by a consumer and the disclosure of such charge.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is necessary to codify agency interpretation of KRS 294.120(1) and (2) and provide more detailed instructions for compliance with the requirements of those provisions. It is also necessary to permit customers to ascertain exactly what they are paying for the services of a broker. It will require that all of the fees that a mortgage loan broker charges for processing a loan shall be contained in one line item and that there will be no markup on charges for services obtained from third parties, such as appraisers, credit reporting agencies, etc. It does not otherwise limit what a broker may charge for brokerage service, provided it is disclosed.

(d) The benefits expected from administrative regulation are: This regulation will eliminate any confusion in the industry and to the public. It will codify the agency's consistent position on the matter. It will do so in a clear manner.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be made applicable to all affected companies and individuals.

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CABINET FOR HEALTH SERVICES  
Department for Public Health

May 15, 2001

(1) **902 KAR 10:045**, Tattoo artist registration, tattoo studio certification and inspection.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 28, 2002, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 10:045 are KRS 211.760.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 10:045.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation establishes accordance with the statute.

(d) The benefits expected from administrative regulation are: changes will be made to the regulation in order to comply with the statute.

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

May 15, 2001

(1) **902 KAR 15:010**, Mobile home.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 28, 2002, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 15:010 are KRS 219.310 to 219.410.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 15:010.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation establishes accordance with the statute.

(d) The benefits expected from administrative regulation are: Changes will be made to the regulation in order to comply with the statute.

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

May 15, 2001

(1) **902 KAR 15:020**, Recreational vehicles.

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

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matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 28, 2002, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 15:020 are KRS 219.310 to 219.410, 219.991(2).

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 15:020.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation establishes accordance with the statute.

(d) The benefits expected from administrative regulation are: Changes will be made to the Regulation in order to comply with the statute.

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

May 1, 2002

(1) **902 KAR 19:010**, Kentucky Birth Surveillance Registry.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 28, 2002, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Birth Surveillance Registry is KRS 211.660

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 19:010.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes that the staff of the Kentucky Birth Surveillance Registry may obtain information and medical records regarding children with birth defects and disabling conditions from outpatient clinics of acute care hospitals that voluntarily maintain such information. KBSR staff may also obtain information from medical laboratories on children up to the age of five years with a primary diagnosis of, or a laboratory test result indicating, a congenital anomaly or high risk condition as determined by the appointed advisory committee. The information provided to the Kentucky Birth Surveillance Registry from outpatient clinics and medical laboratories will be maintained in a confidential manner.

(d) The benefits expected from this administrative regulation are that the ascertainment of children with birth defects will be improved with these additional sources of data. This will result in better prevalence data for specific birth defects and disabling conditions and improved program planning to address the needs of this population.

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

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May 15, 2002

- (1) **902 KAR 20:380**, Operations and services; residential hospice facilities.
- (2) The Office of Inspector General intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 28, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of administrative regulations relating to health facilities and health services is KRS 216B.042(1).
  - (b) The cabinet intends to promulgate 902 KAR 20:380 to establish the minimum standards for the operations of and service provided by residential hospice facilities.
  - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 216B.042(1) requires that the Kentucky Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides for the minimum licensure requirements for the operation of and services provided by residential hospice facilities.
  - (d) The benefits expected from this proposed regulation: The proposed administrative regulation will allow the Office of the Inspector General the authority to ensure that residential hospice facilities provide adequate needs to meet patient need and provide for patient safety.
  - (e) The administrative regulation will be implemented as follows: By the Office of Inspector General, Cabinet for Health Services.

- (1) **902 KAR 55:025**, Schedule III substances.
- (2) Cabinet for Health Services, Department for Public Health intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 28, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of General Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 55:025 are KRS 194A.030, 194A.050, 211.090, 218A.020, 218A.080 and 218A.250.
  - (b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 55:025, Schedule III substances to add buprenorphine to the list of substances classified in Schedule III.
  - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 218A.020 authorizes the Cabinet for Health Services to add, delete, or reschedule substances enumerated in KRS Chapter 218A. This administrative regulation designates Schedule III controlled substances.
  - (d) The benefits expected from administrative regulation are: Conformity with federal regulation.
  - (e) The administrative regulation will be implemented as follows: By the Division of Adult and Child Health, Department for Public Health, Cabinet for Health Services.

May 15, 2002

- (1) **902 KAR 55:030**, Schedule IV substances.
- (2) Cabinet for Health Services, Department for Public Health intends to promulgate an administrative regulation governing the subject

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matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 28, 2002, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 55:030 is KRS 194A.030, 194A.050, 211.090, 218A.020, 218A.100, 218A.250.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 55:030 to add dichlorophenazone to the list of substances classified in Schedule IV to conform with recently amended federal regulations.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 218A.100 authorizes the Cabinet for Health Services to place a substance in Schedule IV if it finds that:

1. The substance has a low potential for abuse relative to substances in Schedule III;
2. The substance has currently accepted medical use in treatment in the United States; and
3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

KRS 218A.020(3) provides that if any substance is designated, rescheduled, or deleted as a controlled substance under a federal law and notice of the designation, rescheduling or deletion is given to the cabinet, the cabinet may similarly control the substance by administrative regulation. The Cabinet for Health Services designates Schedule IV controlled substances.

(d) The benefits expected from administrative regulation are: Conformity with federal regulation.

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

May 15, 2002

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 28, 2002, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 55:090 is KRS 194A.030, 194A.050, 211.090, 218A.020, 218A.250.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 55:090 to conform to recently amended federal regulations.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 218A.020(3) provides that if a controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Health Services, the Cabinet for Health Services may similarly control the substance under KRS Chapter 218A by administrative regulation. This administrative regulation exempts from the provisions of KRS Chapter 218A that anabolic steroid products have been exempted pursuant to federal regulation.

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(d) The benefits expected from administrative regulation are: conformity with federal regulation.

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

Department for Medicaid Services

April 18, 2002

(1) **907 KAR 1:019**, Outpatient Pharmacy Program.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 28, 2002, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to an outpatient pharmacy program are KRS 194A.030(3), 194A.050(1), 205.520(3), 205.561, 205.5632(2), 205.5632(4)(a), 205.5634(2), and 205.5639(2) and HB 103 of the 2002 Session of the General Assembly.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:019, Outpatient Pharmacy Program, to revise the criteria used to review medications to be placed on the drug formulary, to describe drugs that may be on the drug formulary, to revise the prior authorization process and accompanying forms, to define the role and responsibilities of the Pharmacy and Therapeutics Advisory Committee in accordance with HB 103 of the 2002 Session of the General Assembly, and to comply with new drug requirements established in HB 103 of the 2002 Session of the General Assembly.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: The amendments to this administrative regulation are necessary to revise the criteria used to review medications to be placed on the drug formulary, to describe drugs that may be on the drug formulary, to revise the prior authorization process and accompanying forms, to define the role and responsibilities of the Pharmacy and Therapeutics Advisory Committee in accordance with HB 103 of the 2002 Session of the General Assembly, and to comply with new drug requirements established in HB 103 of the 2002 Session of the General Assembly.

(d) The benefits expected from this administrative regulation are: The amendments to this administrative regulation implement a better review process for new drug reviews and comparable drug reviews and revise the drug prior authorization process as well as render the Department for Medicaid Services (DMS) compliant with HB 103 of the 2002 Session of the General Assembly.

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

April, 19, 2002

(1) **907 KAR 1:145**, Supports for community living services for an individual with mental retardation or a developmental disability.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for June 28, 2002 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to June 28, 2002, the public hearing will be canceled.

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

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

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

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

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

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in ac-

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cordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to supports for community living services for an individual with mental retardation or a developmental disability are KRS 194A.030(3), 194.050(1), 205.520(3), and 205.6317.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:145 to:

1. Implement a mandatory incident reporting process for SCL providers;

2. Clarify policy requirements for supports for community living services for provider enrollment and qualifications, covered services, SCL waiting list, health and safety standards; corrective plans, appeals process, and criminal record checks;

2. Revise forms incorporated by reference; and

3. Make necessary corrections to comply with KRS Chapter 13A, and other technical policy amendments.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to establish the coverage provisions relating to home and community based services provided to an individual with mental retardation or a developmental disability as an alternative to placement in an intermediate care facility for an individual with mental retardation or a developmental disability.

(d) The benefits expected from this administrative regulation are to improve the health and safety standards of an individual with mental health mental retardation receiving home and community based services.

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

### **CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development**

May 15, 2002

(1) **921 KAR 2:017.** Kentucky Works supportive services.

(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 June 28, 2002, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or 1 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 calendar days prior to June 28, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (fax).

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for 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 921 KAR 2:017 is KRS 194B.050(1), 205.200(2), 205.2003 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a proposed amendment to an administrative regulation, 921 KAR 2:017. The proposed amendment to the administrative regulation is necessary to:

1. Remove the work expense bonuses for Kentucky Transitional Assistance Program (K-TAP) recipients and post-K-TAP recipients as the result of our intent to promulgate a new administrative regulation, 921 KAR 2:520, regarding a new program for work expense reimbursements.

2. Clarify eligibility for post-K-TAP recipients to comply with our intent to promulgate a new administrative regulation, 921 KAR 2:520, regarding work expense reimbursements.

3. Remove references to the regional transportation network to comply with 921 KAR 2:019.

4. Make other changes that will be needed pertaining to Kentucky Works supportive services.

5. Update material incorporated by reference.

6. Make necessary corrections to comply with KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed amendments to the administrative regulation is as follows: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive public assistance be prescribed by administrative regulations. KRS 205.2003 allows the cabinet to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation amends supportive services for Kentucky Works participants.

(d) The benefits expected from this administrative regulation are: Supportive services assist K-TAP recipients in the pursuit of work and self-sufficiency. A new program regarding post-K-TAP work expense reimbursements, in accordance with 921 KAR 2:520, will replace the work expense bonuses in 921 KAR 2:017. Funding previously allocated for the work expense bonuses will be reallocated to the new program for work expense reimbursement in 921 KAR 2:520. Funding previously allocated for transportation services in the regional transportation network will be reallocated to the system of direct reimbursement for Kentucky Works recipients.



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(e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Department for Community Based Services.

May 15, 2002

(1) **921 KAR 2:019**, Repeal of 921 KAR 2:018.

(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 June 28, 2002, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and  
2. A minimum of 5 persons, or 1 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 calendar days prior to June 28, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (fax).

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for 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 921 KAR 2:019 is KRS 194B.050(1).

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is to repeal 921 KAR 2:018, Transportation Services for Kentucky Works.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation acts specifically to repeal 921 KAR 2:018, Transportation Services for Kentucky Works. Transportation services will no longer be provided through the transportation network for Kentucky Works recipients but will be provided in accordance with 921 KAR 2:017.

(d) The benefits expected from this administrative regulation are: Reimbursement for transportation services will be provided by a direct payment to a Kentucky Works recipient in accordance with 921 KAR 2:017. Funding previously allocated for transportation services in the transportation network will be reallocated for a system of direct reimbursement for Kentucky Works recipients.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Department for Community Based Services.

May 15, 2002

(1) **921 KAR 2:040**, Procedures for determining initial and continuing eligibility.

(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 June 28, 2002, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and  
2. A minimum of 5 persons, or 1 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 calendar days prior to June 28, 2002, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (fax).

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for 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 921 KAR 2:040 are KRS 194.050(1), 205.200, 42 USC 601 et seq.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a proposed amendment to administrative regulation, 921 KAR 2:040. The proposed administrative regulation is necessary to:

1. Add criteria for determining initial and continuing eligibility for Kinship Care Program applicants and recipients;



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2. Amend forms incorporated by reference; and
3. Make necessary corrections to comply with KRS Chapter 13A.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer public assistance programs. This administrative regulation sets forth the procedures used to determine initial and continuing eligibility for assistance under the K-TAP Program.
- (d) The benefits expected from this administrative regulation are: The determination of initial and continuing eligibility will also apply to the Kinship Care Program. By amending the forms the citizens of the Commonwealth will be better served.
- (e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Department for Community Based Services, Division of Policy Development.

May 15, 2002

- (1) **921 KAR 2:500**, Family Alternatives Diversion (FAD).
- (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 June 28, 2002, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or 1 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 calendar days prior to June 28, 2002, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (fax).
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for 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 921 KAR 2:500 is KRS 194B.050(1), 205.200(2), and 42 USC 601 et seq.
- (b) The administrative regulation that the Department for Community Based Services intends to promulgate is a proposed amendment to administrative regulation, 921 KAR 2:500. The proposed amendment to the administrative regulation is necessary to:
  1. Remove the Employment Retention Assistance (ERA) Program for post-Kentucky Transitional Assistance Program (K-TAP) recipients as the result of the promulgation of a new administrative regulation, 921 KAR 2:520, regarding work expense reimbursements for post-K-TAP recipients.
  2. Clarify eligibility criteria for Family Alternatives Diversion (FAD) recipients.
  3. Clarify the eligibility period for FAD.
  4. Make other changes regarding the services provided to FAD recipients.
  5. Update material incorporated by reference.
  6. Make necessary corrections to comply with KRS Chapter 13A.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive public assistance be prescribed by administrative regulations. This administrative regulation amends the Family Alternatives Diversion (FAD) Program and the Employment Retention Assistance (ERA) Program.
- (d) The benefits expected from this administrative regulation are: In place of the ERA Program for post-K-TAP recipients, services for post-K-TAP recipients will be provided through work expense reimbursements which will be contained in a new administrative regulation. Funding previously allocated for ERA will be reallocated for a new program for work expense reimbursements in accordance with 921 KAR 2:520. Eligibility and services for FAD will be clarified which will enable the cabinet to better serve the recipients of this program. Also, FAD will be in compliance with 45 CFR 260.31(b) regarding TANF funds for nonrecurrent, short-term benefits.
- (e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Department for Community Based Services.

May 15, 2002

- (1) **921 KAR 2:520**, Work expense reimbursement program.
- (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 June 28, 2002, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or 1 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 calendar days prior to June 28, 2002, the public hearing will be canceled.

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(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (fax).

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for 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 921 KAR 2:520 is KRS 194B.050(1), 205.200(2), 205.2003 and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a new administrative regulation, 921 KAR 2:520. This new administrative regulation is necessary to:

1. Establish a work expense reimbursement process to eligible post-K-TAP recipients.
2. Establish eligibility for the work expense reimbursement payment.
3. Establish a time frame for payment of work expense reimbursement payments.
4. Implement new policies recommended by workgroups.
5. Include new material to be incorporated by reference.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive public assistance be prescribed by administrative regulations. KRS 205.2003 allows the cabinet to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation establishes a work expense reimbursement program to cover transportation and other work related expenses for post-Kentucky Transitional Assistance Program (K-TAP) recipients.

(d) The benefits expected from this administrative regulation are: This program will assist families to maintain self-sufficiency who have been discontinued from the Kentucky Transitional Assistance Program (K-TAP) as a result of employment. Funding previously allocated to work expense bonuses and employment retention assistance will be reallocated for the new work expense reimbursement program for post-K-TAP recipients.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Department for Community Based Services.

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, JULY 15, 1999

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

STATEMENT OF EMERGENCY  
40 KAR 2:001E

This emergency administrative regulation amends the definitions that are employed in 40 KAR Chapter 2 that relate to telephone solicitations and automated dialing equipment. This emergency administrative regulation is being promulgated with two (2) other emergency administrative regulations to address imminent needs related to the operation of the Commonwealth of Kentucky's No Telephone Solicitation Calls List ("No Call List"). The other two (2) emergency administrative regulations that are being promulgated simultaneously with this administrative regulation are 40 KAR 2:075E and 40 KAR 2:076E. Because this emergency administrative regulation is a definitional administrative regulation, it is necessary to amend it so that the other two (2) emergency administrative regulations will have an appropriate definitional basis and provide a logical fountainhead for the other two (2) emergency administrative regulations. Pursuant to KRS 13A.190, this emergency administrative regulation meets an imminent threat to the public safety and welfare by providing a definitional basis for the other two (2) emergency administrative regulations that address emergencies related to the operation and implementation of Kentucky's No Call List. Specifically, the No Call List was established by statute in 1998, and it permits Kentuckians to limit the number of unwanted telephone solicitations that they receive. Recently, the number of people attempting to sign up for the No Call List has increased exponentially. In fact, in one (1) twenty-four (24) hour period from May 2 to May 3, 2002, over 40,000 people signed up for the No Call List. On March 6, 2002, the number of Kentuckians on the No Call List was 134,877. However, in the short period of time from March 7 of this year until the present, the No Call List has ballooned to over 500,000. Because of the flood of Kentuckians attempting to place their names on the No Call List, this emergency administrative regulation is necessary to address an imminent threat to the public safety and welfare. An ordinary administrative regulation is not sufficient because it could not timely address this flood of Kentuckians attempting to enroll on the No Call List. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent for 40 KAR 2:001 was filed with the Regulations Compiler on May 15, 2002.

PAUL E. PATTON, Governor  
ALBERT B. CHANDLER III, Attorney General

DEPARTMENT OF LAW  
Office of Attorney General  
Consumer Protection Division  
(Emergency Amendment)

40 KAR 2:001E. Definitions for 40 KAR Chapter 2.

RELATES TO: KRS 367.461, 367.463, 367.465, 367.467, 367.469, 367.46951 to 367.46999  
STATUTORY AUTHORITY: KRS 15.180, 367.150, 367.469, 367.46983

EFFECTIVE: May 14, 2002

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the definitions for 40 KAR Chapter 2. [To define terms related to the application for use and permitting use of automated calling equipment in the Commonwealth of Kentucky.]

Section 1. Definitions. (1) "Address" means the permanent location at which legal documents are received by an applicant or permittee.

(2) "Applicant" means any natural person, corporation, company, partnership, or other legal entity seeking:

(a) A permit to use automated calling equipment in the Commonwealth of Kentucky;

monwealth of Kentucky;

(b) To enroll on the No Telephone Solicitation Calls List; or  
(c) To obtain the No Telephone Solicitation Calls List in order to comply with KRS 367.46955.

(3) "Consumer" is defined by KRS 367.46951(5).

(4) "Designated agent" means an agent for service of process of legal documents.

(5) "Division" is defined by KRS 367.46951(9).

(6) "Merchant" is defined by KRS 367.46951(7).

(7) "Name" means a combination of words used by a person, corporation, company, partnership, or other legal entity within the past sixty (60) months as a means of identification.

(8) "No Telephone Solicitation Calls List" or "No Call List" means a list containing the telephone numbers of individuals that indicate their preference not to receive telephone solicitations.

(9) "Permittee" means any holder of a duly issued permit to use automated calling equipment in the Commonwealth of Kentucky.

(10) "Telemarketer" is defined by KRS 367.46951(11).

(11) "Telemarketing company" is defined by KRS 367.46951(13).

(12) "Utilizing" means making direct or indirect use of automated calling equipment in any trade or commerce. [Section 1. In addition to the definitions in KRS 367.461, 367.465 and unless the context otherwise requires:

(1) "Utilizing" means making direct or indirect use of automated calling equipment in any trade or commerce.

(2) "Alternate form of surety" means a financial or commercial transaction which provides the same level of certainty of financial responsibility as a surety bond drawn by a surety company authorized to do business in the Commonwealth of Kentucky in the event of insolvency, bankruptcy, or unavailability of the applicant and related parties to meet claims for restitution losses or civil penalties for violations of KRS Chapter 367.

(3) "Applicant" means any natural person, corporation, company, partnership, or other legal entity seeking a permit to use automated calling equipment in the Commonwealth of Kentucky.

(4) "Permittee" means any holder of a duly issued permit to use automated calling equipment in the Commonwealth of Kentucky.

(5) "Address" means the permanent location at which legal documents are received by an applicant or permittee.

(6) "Name" means a combination of words used by a person, corporation, company, partnership, or other legal entity within the past sixty (60) months as a means of identification.

(7) "Designated agent" means an agent for service of process of legal documents.

(8) "Financial responsibility" means a surety bond by a surety company authorized to do business in the Commonwealth of Kentucky or an alternate form of surety approved by the Attorney General in the event of insolvency, bankruptcy, or unavailability of the applicants or permittees to address consumer complaints, claims for restitution, or civil penalties for alleged violation of KRS Chapter 367.]

ALBERT B. CHANDLER III, Attorney General  
JANET M. GRAHAM, Attorney  
APPROVED BY AGENCY: May 14, 2002  
FILED WITH LRC: May 14, 2002 at 2 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kim Risinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation amends the definitions that are used throughout 40 KAR Chapter 2 regarding automated calling equipment and telephone solicitations.

(b) The necessity of this administrative regulation: This emer-

gency administrative regulation is necessary to provide an appropriate definitional basis for the administrative regulations in 40 KAR Chapter 2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This emergency administrative regulation references appropriate sections of KRS 367.46951 and does not deviate from the definitions provided therein.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing an appropriate definitional basis for the other administrative regulations in 40 KAR Chapter 2, this emergency administrative regulation will promote compliance with the other regulations regarding automated calling equipment and telephone solicitations since it will clarify and define the terms used throughout this regulatory chapter.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: This emergency administrative regulation amends the existing regulation to add not only additional definitions regarding automated calling equipment but also additional definitions relating to telephone solicitations

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify and define terms used in other portions of 40 KAR Chapter 2.

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation does not deviate from the statutory definitions provided in KRS 367.46951.

(d) How the amendment will assist in the effective administration of statutes: The amendment will clarify terms relating to telephone solicitations and provide more guidance to the regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all entities who apply for permits to use automated calling equipment in the Commonwealth of Kentucky, all Kentucky citizens who wish to enroll on the No Telephone Solicitation Calls List and all entities applying to obtain the No Telephone Solicitation Calls List.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact on the above groups will be clarification of the terms used throughout 40 KAR Chapter 2.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund appropriations and agency receipts.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None predicted.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering was not applied because this emergency regulation is simply a definitional provision that relates to other regulations in 40 KAR Chapter 2.

#### STATEMENT OF EMERGENCY 40 KAR 2:075E

This emergency administrative regulation amends procedures relating to the operation of the Kentucky No Telephone Solicitation Calls List ("No Call List") established in KRS 367.46955. The No Call List was established by statute in 1998, and it permits Kentuckians to limit the number of unwanted telephone solicitations that they receive. Recently, the number of people attempting to sign up for the No Call List has increased exponentially. In fact, in one (1) twenty-four (24) hour period from May 2 to May 3, 2002, over 40,000 people signed up for the No Call List. On March 6, 2002, the number of Kentuckians on the No Call List was 134, 877. However, in the short period of time from March 7 of this year until the present, the No Call List has ballooned to over 500,000. This flood of Ken-

tuckians attempting to enroll on the No Call List presents an emergency under KRS 13A.190 for several reasons. First, many senior citizens wish to enroll on the No Call List as a prophylactic measure to curb fraudulent telemarketers who frequently target senior citizens. To these senior citizens and to many other Kentuckians, these fraudulent telemarketers constitute an imminent threat to the public safety and welfare. It is incumbent upon the Commonwealth to have in place a system to deal with the flood of requests to enroll on the No Call List, and this emergency administrative regulation will facilitate this registration process by creating a specific means of registration that will handle this deluge of requests. This emergency administrative regulation creates two (2) additional means of registration that have not been specifically provided for in the current regulations. This emergency administrative regulation provides for Internet enrollment on the No Call List and also provides for an automated telephone dial-in registration system. This automated telephone dial in registration system permits individuals to input their telephone number and be placed upon the No Call List. Along with Internet registration, this system has permitted a larger number of daily registrations than the prior systems. Because of the flood of Kentuckians attempting to place their names on the No Call List, this emergency administrative regulation is necessary to address an imminent threat to the public safety and welfare. An ordinary administrative regulation is not sufficient because it could not timely address this flood of Kentuckians attempting to enroll on the No Call List. This emergency administrative regulation is different from the prior emergency administrative regulation because the prior emergency administrative regulation merely dispensed with the requirement that Kentuckians use a paper card to enroll on the No Call List. However, this emergency administrative regulation creates different methods for enrolling on the No Call List, including Internet and automated telephone dial in registration. Additionally, this emergency administrative regulation provides cut-off dates for consumers to register on the No Call List and it also provides the publication schedule for telemarketers and merchants to obtain the list. The prior emergency administrative regulation was filed on March 26, 2002. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 40 KAR 2:075 was filed with the Regulations Compiler on May 15, 2002.

PAUL E. PATTON, Governor  
ALBERT B. CHANDLER III, Attorney General

#### DEPARTMENT OF LAW Office of Attorney General Consumer Protection Division (Emergency Amendment)

#### 40 KAR 2:075E. Commonwealth of Kentucky No Telephone Solicitation Calls List.

RELATES TO: KRS 367.150, 367.170, 367.46951(14), 367.46955(15), 367.46971, 367.46973, 367.46981[~~1998 Ky. Acts ch. 581, sec. 3(15)~~]

STATUTORY AUTHORITY: KRS 15.180, 367.150, 367.46983  
EFFECTIVE: May 14, 2002

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.46983 authorizes the Attorney General to promulgate administrative regulations required to enforce KRS 367.46951 to 367.46999 governing the sales of goods and services to Kentucky consumers ~~(in the Commonwealth of Kentucky)~~ by use of telephone solicitations. KRS 367.46955(15) ~~[1998 Ky. Acts ch. 581, sec. 3(15)]~~ establishes the right of consumers to be placed on the "Commonwealth of Kentucky No Telephone Solicitation Calls List". ~~[1998 Ky. Acts ch. 581 sec. 3(15), requires the Office of the Attorney General to establish fees to defray the cost of the No Telephone Solicitation Calls Program.]~~ This administrative regulation establishes requirements relating to the "Commonwealth of Kentucky No Telephone Solicitation Calls List" ~~[fees and the notification procedure]~~.

Section 1. ~~[Definitions. (1) "Telemarketer" means any of the following entities:~~

~~(a) "Merchant", as defined by 1998 Ky. Acts ch. 581, sec. 1(7);~~

or

- (b) "Telemarketer", as defined by 1998 Ky. Acts ch. 581, sec. 4(14); or  
 (c) "Telemarketing company", as defined by 1998 Ky. Acts ch. 581, sec. 4(13).  
 (2) "A holder of a telephone number" means each member of a household.

Section 2. Placement on the "Commonwealth of Kentucky No Telephone Solicitation Calls List". (1) A person [holder of a telephone number] who wishes to be placed on the "Commonwealth of Kentucky No Telephone Solicitation Calls List" may notify the division and request placement on the No Call List by providing the person's residential telephone number [shall file a request on the "Commonwealth of Kentucky Request for Placement on No Telephone Solicitation Calls List"].

(2) A person may enroll on the No Call List by:

- (a) Submitting a completed "Commonwealth of Kentucky Request for Placement on No Telephone Solicitation Calls List";  
 (b) Calling an automated telephone dial-in registration number established by the division and providing all the information requested by the telephone prompts; or  
 (c) Accessing the appropriate Internet site established by the division and properly inputting all the data responsive to the web site prompts.

Section 2. Commonwealth of Kentucky No Telephone Solicitation Calls List/Zero Call List. On July 15, 2002, the Commonwealth of Kentucky "No Telephone Solicitation Calls List" established by KRS 367.46955(15) shall be renamed the Zero Call List. [A holder of a telephone number shall include the following information:

- (a) Name;  
 (b) Address, including city, county, and zip code;  
 (c) The number of each telephone to which the notification applies.

(3) A holder of a telephone number shall sign and date the "Commonwealth of Kentucky Request for Placement on No Telephone Solicitation Calls List" submitted to the Office of the Attorney General.

(4) The name of a holder of a telephone number shall appear on the "Commonwealth of Kentucky No Telephone Solicitation Calls List" on the first business day of the month following receipt of the request.

(5) The name of a holder of a telephone number shall be removed from the "Commonwealth of Kentucky No Telephone Solicitation Calls List" if:

- (a) A written request in any form by the name of a holder of a telephone number has been received by the Attorney General; or  
 (b) If the name of a holder of a telephone number has been purged from the list because he is no longer the holder of the telephone number identified on the "Commonwealth of Kentucky No Telephone Solicitation Calls List".

(6) If the telephone number of a holder of a telephone number on the list has changed, the holder's telephone number on the list shall be changed if he has notified the Office of the Attorney General in writing of the change.]

Section 3. Publication. (1) Quarterly publication schedule. The No Telephone Solicitation Calls List shall be published according to the following schedule:

- (a) [The "Commonwealth of Kentucky No Telephone Solicitation Calls List" shall be published on the first business day of each quarter as a printed document or by computer diskette. It shall contain the names of holders of a telephone number who have requested to be placed on the list the preceding quarter.

(b) Months for quarterly publication of the "Commonwealth of Kentucky No Telephone Solicitation Calls List".

4.] The first quarter shall be effective January 15-April 14, and it shall be published on December 15 [include the months of January, February and March];

(b) [2.] The second quarter shall be effective April 15-July 14, and it shall be published on March 15 [include the months of April, May and June];

(c) [3.] The third quarter shall be effective July 15-October 14,

and it shall be published on June 15 [include the months of July, August, and September];

(d) [4.] The fourth quarter shall be effective October 15-January 14, and it shall be published on September 15 [include the months of October, November and December].

(2) The No Telephone Solicitation Calls List shall be:

(a) Available in accordance with Section 5 of this administrative regulation; and

(b) Published on the Internet at web site address www.kycall0.com. It shall also be available in electronic and hard copy. Electronic and hard copies of the No Call List shall be made available to requesters in the most cost efficient manner for the Commonwealth. Requests for electronic and hard copies of the No Call List shall require a minimum of five (5) business days notice to the Division.

Section 4. Deadline for Telephone Numbers' Inclusion in Next Quarterly Publication of No Call List. The telephone numbers of properly completed requests for registration on the No Call List shall become part of the No Call List in the calendar quarter following the deadline for receipt of registration requests according to the following schedule:

Receipt Deadline	Calendar Quarter
November 15th	January 15 - April 14
February 15th	April 15 - July 14
May 15th	July 15 - October 14
August 15th	October 15 - January 14

["Commonwealth of Kentucky No Telephone Solicitation Calls List" shall be published on the first business day of each month as a printed document or by computer diskette. It shall contain the names of holders of a telephone number who have requested to be placed on the list the preceding month.

Section 4. Fee. (1) Monthly fee. Thirty-five (35) dollars shall be charged to a telemarketer for a copy per month of the "Commonwealth of Kentucky No Telephone Solicitation Calls List".

(2) Quarterly fee. A \$100 fee shall be charged to a telemarketer for a copy per quarter of the "Commonwealth of Kentucky No Telephone Solicitation Calls List".

(3) Annual fee. A \$400 fee shall be charged to a telemarketer for the payment in advance of the "Commonwealth of Kentucky No Telephone Solicitation Calls List" for the following twelve (12) consecutive months.

Section 5. The "Commonwealth of Kentucky No Telephone Solicitation Calls List" shall:

- (1) Be certified by the Office of the Attorney General; and  
 (2) Not be duplicated by a telemarketing company in any form, except for copies required to notify employees of a holder of a telephone number to whom no solicitation calls shall be made.]

Section 5. [6.] Application for "Commonwealth of Kentucky No Telephone Solicitation Calls List". (1) A telemarketing company or merchant subject to the provisions of KRS 367.46951 to 367.46999 shall apply for a [certified] copy of the "Commonwealth of Kentucky No Telephone Solicitation Calls List" on an "Application [a "Request] for Commonwealth of Kentucky No Telephone Solicitation Calls List".

(2) A telemarketing company or merchant shall provide the following information:

- (a) The [month,] quarter[,] or year for which a list is requested;  
 (b) Whether the request is for Internet access to the list, electronic copy or hard copy;  
 (c) [a county or statewide list];  
 (c) The format of the list, either printed document or computer diskette;  
 (d) The name and title of the person requesting the information; and

(d) [(e)] The name, telephone number, and complete address of the merchant or telemarketing [telemarketer] company.

(3) Before a telemarketing company or merchant may obtain a copy of the No Call List, it shall sign a written confidentiality agreement prepared by the Office of the Attorney General that:

(a) Prohibits disclosure of information contained on the No Call List;

(b) Restricts use of the No Call List exclusively for the purpose of compliance with KRS 367.46951-367.46999; and

(c) Prohibits the transfer of the copy of the No Call List to any person or entity who has not completed and signed a written "Application for Commonwealth of Kentucky No Telephone Solicitation Calls List", form TS-8, and filed it with the division.

Section 6. Permissible Uses of the No Call List and Database by Telemarketing Companies and Merchants. (1) Each merchant or telemarketing company that obtains the No Call List shall use the list only for the purposes of preventing telephone solicitation calls to persons whose telephone numbers appear on the list.

(2) Each merchant or telemarketing company that obtains the No Call List shall maintain the confidentiality of the information on the No Call List.

~~Section 7. [(1) A telemarketer that is exempted from the provisions of KRS Chapter 367 by KRS 367.46951(2) may obtain a certified copy of the "Commonwealth of Kentucky No Telephone Solicitation Calls List" in order to remove telephone numbers on the list from its sales list.~~

~~(2) A "Commonwealth of Kentucky No Telephone Solicitations Calls List" obtained pursuant to subsection (1) of this section shall not be used for marketing purposes.~~

~~(3) A telemarketer that obtains a "Commonwealth of Kentucky No Telephone Solicitation Calls List" pursuant to subsection (1) of this section shall comply with statutes and administrative regulations governing the "Commonwealth of Kentucky No Telephone Solicitation Calls List".~~

Section 8. Incorporation by Reference. (1) The following material is ~~(forms are)~~ incorporated by reference:

(a) "Request for Placement on No Telephone Solicitation Calls List", Form TS-7, 1998; and

(b) "Application ~~[Request]~~ for Commonwealth of Kentucky No Telephone Solicitation Calls List", Form TS-8, 2002, ~~[1998; and~~

~~(c) "Telemarketing Complaint Form", Form TS-9, 1998.]~~

(2) This material ~~[These forms]~~ may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALBERT B. CHANDLER III, Attorney General  
JANET M. GRAHAM, Attorney

APPROVED BY AGENCY: May 14, 2002

FILED WITH LRC: May 14, 2002 at 2 p.m.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kim Risinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation amends the procedure for enrolling on the No Telephone Solicitation Calls List ("No Call List"), provides deadlines for enrollment on the No Call List, amends the procedure for obtaining the No Call List, amends the procedure for its publication and provides permissible uses for the No Call List.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary to deal with the large numbers of individuals attempting to enroll on the No Call List.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 367.46955(15) does not mandate a specific type of registration for the No Call List. It merely provides that a person must notify the Consumer Protection Division. Additionally, the deadlines for enrollment on the No Call List and the procedure for obtaining the list are in conformity with the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By permitting a broader variety of enrollment methods, this administrative regulation will prevent citizens from being delayed in attempting to enroll on the No Call List.

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: This emergency administrative regulation provides that citizens may enroll on the No Call List by the Internet or by an automated telephone dial-in registration system; it provides deadlines for enrollment on the No Call List; it provides publication dates for the No Call List, provides alternative methods for obtaining the list; it provides permissible uses of the No Call List.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide additional means for the public to enroll on the No Call List and appropriate procedures for the industry groups so that they may know how they may obtain the list in order to comply with it.

(c) How the amendment conforms to the content of the authorizing statutes: Because KRS 367.46955(15) does not mandate a specific means of enrolling on the No Call List, this regulation conforms to the statutory provision.

(d) How the amendment will assist in the effective administration of statutes: The amendment will facilitate registration of Kentuckians on the No Call List by providing a broader array of enrollment methods for the citizenry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all Kentuckians who wish to enroll on the No Call List and all entities who must obtain the list in order to comply with its prohibitions on telephone solicitations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This emergency administrative regulation will provide an easier means of enrolling on the No Call List by permitting citizens to register by telephone. Also, industry groups will be helped in knowing specific publication dates for the list and specific methods for obtaining it. By providing Internet access to the list, it also provides a technological benefit to industry groups.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund appropriations and agency receipts.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None predicted.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering was applied in this case because the Attorney General's Office will provide the No Call List via the Internet so that large companies that are more technologically advanced may comply with it via their current technological capability. However, smaller businesses can obtain the No Call List by hard copy (paper) or electronic copy (compact disk).

#### STATEMENT OF EMERGENCY 40 KAR 2:076E

This emergency administrative regulation amends the current procedure for filing complaints related to telephone solicitations and establishes the factors that the Attorney General's Office will consider when enforcing the prohibitions of KRS 367.46955. First, this emergency administrative regulation amends the current procedure by permitting consumers to file complaints on the Internet. Second, this emergency administrative regulation gives guidance to the regulated community regarding certain exemptions in the current law. Specifically, KRS 367.46951 defines the phrase "telephone solicitation" and exempts from this definition certain specific relationships. One (1) of these exemptions is for telephone calls if the consumer has a "prior or existing business relationship" with the telemarketer or merchant, KRS 367.46951(2)(c). This emergency administrative regulation provides guidance to the regulated community regarding the factors that the Attorney General shall consider



in determining whether a merchant or telemarketer is exempt from the restrictions in KRS 367.46955. Pursuant to KRS 13A.190, the promulgation of this administrative regulation meets an imminent threat to the public safety and welfare. First, this emergency administrative regulation broadens the means for the public to file complaints against telemarketers by permitting complaints to be filed electronically on the Internet. Because some irresponsible telemarketers change locations and business forms frequently, the faster that the division can receive and process these complaints, the more likely that some action may be taken against these telemarketers. By adding the Internet as a means of filing detailed complaints against these entities, more protection can be given to Kentucky citizens, particularly senior citizens. This emergency administrative regulation is necessary to address this threat to public safety and welfare. Additionally, as previously noted, this emergency administrative regulation gives industry groups guidance regarding the factors that the Attorney General will consider in determining whether a merchant or telemarketer is exempt from the prohibitions in KRS 367.46955 due to a prior or existing business relationship. Pursuant to KRS 13A.190, this emergency administrative regulation is necessary to protect the public welfare since industry groups have requested guidance regarding this particular aspect of KRS 367.46951. It is necessary to the public welfare that the Attorney General promulgate this emergency administrative regulation since some violations of KRS 367.46955 carry criminal penalties. An ordinary administrative regulation is not sufficient because it cannot timely give industry groups guidance regarding the enforcement factors considered by the Attorney General with respect to analyzing the prior or existing business relationship exception. Additionally, an ordinary administrative regulation is not sufficient since it would not timely permit the filing of Internet complaints regarding telemarketing violations. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent for 40 KAR 2:076 was filed with the Regulations Compiler on May 15, 2002.

PAUL E. PATTON, Governor  
ALBERT B. CHANDLER III, Attorney General

**DEPARTMENT OF LAW**  
**Office of Attorney General**  
**Consumer Protection Division**  
**(Emergency Amendment)**

**40 KAR 2:076E. Procedures and notification of violations of KRS 367.46955 and 367.170 relative to telephone solicitations [1998 Ky. Acts ch. 581, sec. 3(1)-(14), (16)].**

RELATES TO: KRS 367.150, 367.170, 367.46955, 367.46971, 367.46973, 367.46981, ~~1998 Ky. Acts ch. 581, sec. 3(1)-(14), (16)]~~  
STATUTORY AUTHORITY: KRS 15.180, 367.150, 367.46983  
EFFECTIVE: May 14, 2002  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.46983 authorizes the Attorney General to promulgate administrative regulations required to enforce KRS 367.46951 to 367.46999 governing the sales of goods and services to Kentucky consumers ~~[in the Commonwealth of Kentucky]~~ by use of telephone solicitations. KRS 367.46955 ~~[1998 Ky. Acts ch. 581, sec. 3(1)-(14), (16)]~~ establishes prohibited telephone solicitation acts or practices ~~[for any telemarketing company]~~. This administrative regulation establishes requirements relating to enforcement against any person who commits a ~~[the enactment and enforcement of the]~~ prohibited telephone solicitation act or practice.

Section 1. Complaints relating to a violation of KRS 367.46955 ~~[1998 Ky. Acts ch. 581, sec. 3(1)-(14), (16)]~~ shall be filed with the ~~[Office of the Attorney General, Consumer Protection]~~ division in the following manner:

- (1) An oral complaint made either by telephone or in person; ~~[or]~~
- (2) A written complaint giving a statement of the facts; ~~[or]~~
- (3) A written complaint filed on "Telemarketing Complaint Form";

or

- (4) A complaint filed electronically using the Internet Telemarketing Complaint Form on the Kentucky Attorney General's web site.

Section 2. Factors Considered in Enforcement Actions. In determining whether a prior or existing business relationship exists pursuant to KRS 367.46951(2), the division shall consider the following factors prior to exercising its enforcement authority:

(1) Whether the relationship was formed prior to the telephone solicitation, by a voluntary two (2) way communication between the telemarketer or merchant and the consumer;

(2) Whether the relationship involves commercial or mercantile activity, including goods or services;

(3) Whether the relationship involves a mutual exchange of consideration;

(4) Whether the relationship has been previously terminated by either party, including the consumer's termination of the relationship by informing the telemarketer or merchant that he no longer wishes to receive telephone solicitations from the telemarketer or merchant; and

(5) Whether a reasonable consumer would expect the business relationship to extend to related business entities or organizations of the telemarketer or merchant, including parent or subsidiary corporations, partnerships, or affiliates.

~~[(4) A person filing a complaint shall provide the following information:~~

~~(a) Name, home and work phone numbers, address, city, county, state, and zip code;~~

~~(b) Name of the telemarketing company or person, including address, city, county, state and zip code, that is the subject of the complaint;~~

~~(c) Time and length of each call;~~

~~(d) Whether a fee was requested;~~

~~(e) Whether the caller used threatening, intimidating, profane or obscene language;~~

~~(f) Whether the person filing the complaint had advised the caller that he was not interested in the product. If so, how long it took for the caller to end the call; and~~

~~(g) A statement of the facts relating to the complaint.]~~

Section 3. [2.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Telemarketing Complaint Form", Form TS-9, 2002; and

(b) "Internet Telemarketing Complaint Form", TS-10, 2002 ~~[1998 is incorporated by reference]~~.

(2) This material ~~[form]~~ may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ALBERT B. CHANDLER III, Attorney General  
JANET M. GRAHAM, Attorney

APPROVED BY AGENCY: May 14, 2002  
FILED WITH LRC: May 14, 2002 at 2 p.m.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Kim Risinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation amends the procedure for filing a complaint to permit citizens to file a telemarketing complaint electronically. It also sets forth the factors that the Attorney General will consider in enforcing the telemarketing statutes with respect to prior or existing business relationships.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary because citizens need a more efficient and more technologically feasible method of submitting telemarketing complaints. Additionally, the emergency administrative regulation is necessary to give guidance to the regulated community regarding the factors that the Attorney General will consider in its enforcement of the telemarketing statutes relating to prior or existing business relationships.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 367.46955(15) does not mandate a specific method of filing a complaint against a telemarketer. Therefore, filing an electronic complaint would conform to the statute. Additionally, with respect to the factors regarding a prior or existing

business relationship, the Attorney General is not attempting to define this term, but is merely providing guidance to the regulated community regarding the enforcement of the telemarketing prohibitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation will assist in the enforcement of the statutes by permitting a consumer to file a complaint in a more timely fashion. By permitting quicker filing of complaints, this will facilitate enforcement against fraudulent telemarketing companies that tend to rapidly change addresses and business form. Additionally, by giving the regulated community guidance regarding the factors it will consider in enforcement, this office will assist industry in complying with the statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: This emergency administrative regulation changes the existing regulation by providing that citizens may file complaints against telemarketers by using the Internet. It also provides a list of factors that the Attorney General will consider in determining if a prior or existing business relationship exists under KRS 367.46951(2).

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary because the current regulation does not provide a technologically feasible method of filing a complaint against a telemarketer. Internet complaints may be processed faster than complaints that are downloaded and mailed in to the division. Additionally, the regulation is necessary to give the regulated community guidance regarding the factors considered in enforcement of the telemarketing laws.

(c) How the amendment conforms to the content of the authorizing statutes: Because KRS 367.46955(15) does not mandate a specific method of filing a complaint against a telemarketer, the regulation conforms to the statute. Additionally, the term "prior or existing business relationship" is not defined in the statute, and this regulation does not attempt to define it. However, it does provide the factors that the Attorney General will consider in its enforcement of the telemarketing statutes.

(d) How the amendment will assist in the effective administration of statutes: The amendment will facilitate the ability of citizens to file telemarketing complaints since it will provide an additional, quicker method of doing so. This will facilitate enforcement against fraudulent telemarketers who rapidly change their business addresses and corporate form. Additionally, providing factors related to the enforcement provisions will give industry groups guidance regarding their compliance procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all Kentuckians who wish to file a complaint against a telemarketer, and it affects all entities making telephone solicitations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Kentucky citizens will be impacted because they will be provided with an additional method of filing a complaint against a telemarketer. Industry groups will be impacted because they will be given guidance regarding the factors that the Attorney General's office will take into consideration in enforcing the telemarketing statutes.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund appropriations and agency receipts.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None predicted.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering was applied with respect to adding the additional method of filing a complaint against a

telemarketer. Although this benefit inures to all Kentuckians, some citizens are more technologically integrated than other citizens. Therefore, in this regulation, the office has maintained the traditional methods of filing a complaint against a telemarketer, but it has also provided the online electronic method for use by other citizens who are more experienced in the use of computer technology. With respect to the prior or existing business relationship exception, these factors will be used by the Attorney General in the enforcement of the telemarketing statutes. Therefore, tiering was not applied, because equal protection requires that these factors be considered in all cases.

## STATEMENT OF EMERGENCY 302 KAR 20:250E

An infectious and contagious mildly pathogenic avian influenza virus, has been detected in several states that export live domestic poultry and poultry products to Kentucky. Avian influenza subtypes H5 and H7 are of particular concern due to their potential for developing into highly pathogenic forms of the disease affecting the avian population and becoming zoonotic and affecting public health. The disease is highly contagious and spreads rapidly. The normal movement of domestic poultry and poultry products from any state in which avian influenza virus is present and spreading is a major and real threat to Kentucky's domestic poultry industry and the public health of Kentucky's citizens. It is, therefore, absolutely essential, vital, and in the best interest and welfare of the industry and public that requirements, in the form of an emergency administrative regulation, be effective immediately to establish requirements for the movement of live domestic poultry and poultry products into the state to control and prevent the introduction of this contagious and infectious disease in Kentucky. This administrative regulation will be replaced by an ordinary administrative regulation. Notice of Intent of the ordinary administrative regulation will be filed simultaneously with the emergency administrative regulation.

PAUL E. PATTON, Governor

BILLY RAY SMITH, Commissioner

## DEPARTMENT OF AGRICULTURE Division of Animal Health (Emergency Administrative Regulation)

### 302 KAR 20:250E. Avian influenza.

RELATES TO: KRS 257.070

STATUTORY AUTHORITY: KRS 257.030

EFFECTIVE: May 15, 2002

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that importation of animals into Kentucky complies with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of livestock into, through, or within Kentucky. This administrative regulation will establish requirements for entry into Kentucky to prevent the introduction and spread of avian influenza virus into Kentucky domestic poultry.

Section 1. Definitions. (1) "Clean and disinfected" means the item is free of organic matter and is disinfected with a phenolic or chlorine-based disinfectant or other approved agent that is viricidal to avian influenza virus.

(2) "Domestic poultry" means chickens, turkeys, quail, pheasants, chukars, peafowl, guineas, ratites, waterfowl, and any other avian species as determined by the State Veterinarian.

(3) "NPIP" means National Poultry Improvement Plan.

(4) "Poultry products" means hatching eggs, chicks, poults, table eggs, litter, and offal, but does not include processed poultry meat for human consumption.

(5) "State affected with avian influenza" means the subtype H5 and H7 avian influenza virus has been diagnosed anywhere within the state by serology or virus isolation in domestic poultry within the last ninety (90) days.



Section 2. No live domestic poultry or poultry products originating from a positive avian influenza flock may enter Kentucky for any purpose.

Section 3. Live domestic poultry, except those entering for slaughter and processing, and poultry products from states affected with avian influenza may enter Kentucky only under the following circumstances:

(1) The domestic poultry or poultry product originate from a flock that is certified as avian influenza clean from the National Poultry Improvement Plan and the shipment is accompanied by a USDA VS Form 9-3; or

(2) The domestic poultry or poultry product originate from an avian influenza-negative flock that participates in an approved state-sponsored avian influenza monitoring program and the shipment is accompanied by a Certificate of Veterinary Inspection indicating participation and listing the general description of the birds, test date, test results, and name of testing laboratory; or

(3) The domestic poultry or poultry product originate from a flock in which a minimum of thirty (30) birds, four (4) weeks of age or older, or the complete flock, if fewer than thirty (30), are serologically negative to an Enzyme Linked Immunosorbent Assay (ELISA) or Agar Gel Immunodiffusion (AGID) test for avian influenza within seventy-two (72) hours of entry and a minimum of ten (10) birds (e.g. two (2) pools of five (5) birds per house) are tested negative on tracheal swabs to a Directigen (R) test within seventy-two (72) hours of entry or negative to other tests approved by the department; the shipment shall be accompanied by a Certificate of Veterinary Inspection listing the general description of the birds, test date, test results, and name of testing laboratory.

Section 4. Live domestic poultry from states affected with avian influenza may enter Kentucky for slaughter and processing only under the following circumstances: A minimum of thirty (30) birds per flock are serologically negative to an ELISA or AGID test for avian influenza within seventy-two (72) hours of entry and a minimum of ten (10) birds (e.g., two (2) pools of five (5) birds per house) are tested negative on tracheal swabs to a Directigen (R) test within seventy-two (72) hours of entry or negative to other tests approved by the department.

Section 5. Chicks, poults, or hatching eggs entering Kentucky from states affected with avian influenza shall be transported in new disposable containers, or when origin an NPIP primary breeder, may be transported in industry-approved plastic containers which shall be sanitized following each use. A statement from the owner, manager, or agent verifying compliance with this requirement shall be included on or attached to the USDA VS Form 9-3 or Certificate of Veterinary Inspection and faxed to Kentucky Department of Agriculture, Office of State Veterinarian, 502/564-7852. Disposable containers shall be properly disposed of at the point of destination.

Section 6. No chicks, poults, or hatching eggs originating from a hatchery that received eggs from a positive avian influenza flock within the last thirty (30) days shall enter Kentucky unless:

(1) All eggs that are present in the hatchery that were produced at least ten (10) days prior to clinical signs or positive test results from a positive avian influenza breeder flock have been removed from the hatchery; and

(2) The hatchery and associated equipment, containers, and vehicles have been thoroughly cleaned and disinfected; and

(3) A statement from the owner, manager, or agent verifying compliance with this administrative regulation is included on or attached to the USDA VS Form 9-3 or Certificate of Veterinary Inspection.

Section 7. No domestic poultry originating from states affected with avian influenza may enter Kentucky for the purpose of being offered for sale, barter, exchange, or exhibition in any auction market, marketplace, fair, show, or other event. Domestic poultry from other states may enter Kentucky for the purpose of being offered for sale, barter, exchange, or exhibition in any auction market, marketplace, fair, show, or other event only under the following circumstances:

(1) The domestic poultry or poultry product originate from a flock that is certified as avian influenza clean from the National Poultry Improvement Plan and the shipment is accompanied by a USDA VS Form 9-3; or

(2) The domestic poultry or poultry product originate from an avian influenza-negative flock that participates in an approved state-sponsored avian influenza monitoring program and the shipment is accompanied by a Certificate of Veterinary Inspection indicating participation and listing the general description of the birds, test date, test results, and name of testing laboratory; or

(3) The domestic poultry or poultry product originate from a flock in which a minimum of thirty (30) birds, four (4) weeks of age or older, or the complete flock, if fewer than thirty (30), are serologically negative to an Enzyme Linked Immunosorbent Assay (ELISA) or Agar Gel Immunodiffusion (AGID) test for avian influenza within fourteen (14) days of entry and a minimum of ten (10) birds (e.g. two (2) pools of five (5) birds per house) are tested negative on tracheal swabs to a Directigen (R) test within seventy-two (72) hours of entry or negative to other tests approved by the department; the shipment shall be accompanied by a Certificate of Veterinary Inspection listing the general description of the birds, official individual identification of each bird, test date, test results, and name of testing laboratory.

Section 8. Domestic poultry originating from Kentucky that have been transported to a state that is affected with avian influenza shall not return to Kentucky until such time as they have been tested negative as outlined in Section 7(3) of this administrative regulation.

Section 9. All vehicles associated with transporting domestic poultry or poultry products from states affected with avian influenza shall be cleaned and disinfected prior to loading of domestic poultry or poultry products. In addition, loaded vehicles shall also have tires, wheels, and undercarriage cleaned and disinfected after leaving the premises and prior to entering Kentucky. Similar vehicles that are empty shall be completely cleaned and disinfected inside and outside prior to entering Kentucky. A statement from the owner, manager, or agent verifying compliance with this requirement shall be included on or attached to the USDA VS Form 9-3 or Certificate of Veterinary Inspection, if such documents are applicable.

Section 10. Prior to entry into Kentucky, all test results and the origin and destination of the shipment shall be faxed to and receipt acknowledged by: Kentucky Department of Agriculture, Office of State Veterinarian, (502) 564-7852 within twenty-four (24) hours of receiving test results. Live domestic poultry and poultry products imported into the Commonwealth of Kentucky shall meet all other import requirements required by 302 KAR 20:020 and 302 KAR 20:040.

Section 11. This administrative regulation shall not be construed as limiting the Kentucky Department of Agriculture authority to establish additional quarantine or testing requirements on imported domestic poultry or poultry products.

Section 12. Penalties for any violation of this administrative regulation shall be in accordance with KRS 257.990.

Section 13. Incorporation by Reference. The following material is incorporated by reference:

(1) United States Department of Agriculture, Animal and Plant Health Inspection Service, National Poultry Improvement Plan "Report of Sales of Hatching Eggs, Chicks, and Poults," Form VS 9-3.

(2) The document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks, 2nd Floor, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m., Monday through Friday.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: May 15, 2002

FILED WITH LRC: May 15, 2002 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dr. Don Notter, State Veterinarian.

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements to monitor the entry of domestic poultry into Kentucky.

(b) The necessity of this administrative regulation: To prevent the introduction and spread of the avian influenza virus to Kentucky domestic poultry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute mandates the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 257. This regulation establishes procedures needed for implementation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures for monitoring entry of domestic poultry into Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Could potentially affect all domestic poultry producers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Out-of-state producers will be required to comply with regulations; in-state producers will be required to comply only if they return domestic poultry to Kentucky after transporting out-of-state.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish or increase any fee.

(9) TIERING: Is tiering applied? Tiering was not used. This administrative regulation applies equally to all individuals and entities regulated by it.

**STATEMENT OF EMERGENCY**  
**803 KAR 25:010E**

The Department of Workers Claims must amend this administrative regulation by emergency to eliminate problems with the current administrative regulation. Earlier changes to this administrative regulation have proven to be beyond the statutory authority of the department, are detrimental to the public welfare, and will increase costs for the state of Kentucky. The department has statutory authority for two (2) formal proceedings in a workers compensation claim - a benefit review conference and a hearing. The current administrative regulation allows for three (3) proceedings which requires claimants, attorneys, and administrative law judges to have to attend an extra proceeding. This requirement for an extra formal proceedings will require additional travel and expense for all of the parties involved as well as administrative law judges, Workers Compensation Fund and Uninsured Employers' Fund attorneys. This amendment will eliminate the early benefit review conferences and save the state approximately \$54,000 in travel expenses for administrative law judges alone. There will be additional savings of travel expenses for attorneys who represent the Uninsured Employer's Fund and Workers Compensation Fund. The first two (2) rounds of early benefit review conferences have proved ineffective and have little or no impact on early settlements. This administrative regulation is being amended to also eliminate the ability of administrative law judges to impose a \$500 sanction for failure to comply with any portion of this administrative regulation. There is no statutory authority to warrant the imposition of such a fine. Therefore, it must be removed. The department must also amend the ten (10) day time limitation on objecting to evidence that is filed with an application. This violates due process for employers and carriers who do not obtain the information in time to make the appropriate objection to evidence that they feel is inappropriate. Therefore, it is imperative that the department change this immediately to provide constitutional protection to all the parties involved in workers compensation claims. The time constraints to appeal to the Workers Compensation Board will be amended to require a notice of appeal and a brief to be filed thirty (30) days after the notice. The department believes this will provide a greater service to claimants, employers, and insurers by providing sufficient time for an appeal resulting in better quality arguments. This emergency administrative regulation will be followed by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
LARRY GREATHOUSE, Commissioner

**LABOR CABINET**  
**Department of Workers Claims**  
**(Emergency Amendment)**

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

RELATES TO: KRS 342.0011, 342.125, 342.260, 342.265, 342.270(3), 342.300, 342.310, 342.315, 342.710, 342.715, 342.732, 342.760

STATUTORY AUTHORITY: KRS 342.033, 342.260(1), 342.270(3), 342.285(1)

EFFECTIVE: April 18, 2002

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the commissioner to promulgate an administrative regulation establishing procedures for the resolution of claims. This administrative regulation establishes the procedure for the resolution of claims before an administrative law judge or Workers' Compensation Board.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Board" is defined by KRS 342.0011(10).

(3) "Civil rule" means the Kentucky Rules of Civil Procedure.

(4) "Commissioner" is defined by KRS 342.0011(9).

(5) "Date of filing" means the date that:

(a) A pleading, motion, or other document is received by the Commissioner at the Department of Workers' Claims in Frankfort, Kentucky, except:

1. Final orders and opinions of administrative law judges, which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion; and

2. Documents delivered to the offices of the Department of Workers' Claims after the office is closed at 4:30 p.m. or on the weekend which shall be deemed filed the following business day; or

(b) A document is transmitted by United States registered (not certified) or express mail, or by other recognized mail carriers, and the date the transmitting agency receives the document from the sender as noted on the outside of the container used for transmitting, within the time allowed for filing.

(6) "Employer" means individuals, partnerships, voluntary associations and corporations.

(7) "Employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.640 but has not complied with KRS 342.340.

(8) "Special defenses" means defenses that shall be raised by

"special answer" filed in accordance with Section 5(2)(d) of this administrative regulation.

- (a) KRS 342.035(3) unreasonable failure to follow medical advice;
  - (b) KRS 342.165 failure to comply with safety administrative regulation;
  - (c) KRS 342.316(6) and 342.335 false statement on employment application;
  - (d) KRS 342.395 voluntary rejection of KRS Chapter 342;
  - (e) KRS 342.610(3) voluntary intoxication and self-infliction of injury;
  - (f) KRS 342.710(5) refusal to accept rehabilitation services; and
  - (g) Running of periods of limitations or repose under KRS 342.185, 342.270, 342.316, or other applicable statute.
- (9) "Latest available edition" means that edition of the "Guides to the Evaluation of Permanent Impairment" which the commissioner has certified as being generally available to the department, attorneys, and medical practitioners, by posting prominently at the department's hearing sites the date upon which a particular edition of the "Guides to the Evaluation of Permanent Impairment" is applicable for purposes of KRS Chapter 342.

Section 2. Parties. (1) The party making the original application for resolution of claim pursuant to KRS 342.270 or 342.316 shall be designated as "plaintiff". Adverse parties shall be designated as "defendants".

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to exist. If a person refuses to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An administrative law judge shall order, upon a proper showing, that a party be joined or dismissed.

(b) The Special Fund may be joined as a defendant in accordance with the appropriate statutory provisions for claims in which the injury date or date of last exposure occurred before December 12, 1996.

(c) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.

Section 3. Pleadings. (1) An application for resolution of claim and all other pleadings shall be typewritten and submitted in accordance with this administrative regulation.

(a) For an injury claim, an applicant shall submit a completed Form 101, Application for Resolution of Injury Claim.

(b) For an occupational disease claim, an applicant shall submit a completed Form 102, Application for Resolution of Occupational Disease Claim.

(c) For a hearing loss claim, an applicant shall submit a completed Form 103, Application for Resolution of Hearing Loss Claim.

(2) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The commissioner shall make service by first class mail. Incomplete applications may be rejected and returned to the applicant. If the application is refiled in proper form within twenty (20) days of the date it was returned, the filing shall relate back to the date the application was first received by the commissioner. Otherwise, the date of second receipt shall be the filing date.

(3) All pleadings shall be served upon the commissioner and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to that representative, at the party's or representative's last known address. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. Notices of deposition and physical examination shall be served upon the parties and shall not be filed with the commissioner.

(4) After the application for resolution has been assigned to an administrative law judge, subsequent pleadings shall include, within the style of the claim and immediately before the claim number,

"Before administrative law judge (name)". Upon consolidation of claims, the most recent claim number shall be listed first.

(5)(a) All documents involved in an appeal to the Workers' Compensation Board shall include the language "Before Workers' Compensation Board" before the claim number within the style of the claim.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of the envelope containing documents involved in an appeal.

Section 4. Motions. (1) The party filing a motion shall tender a proposed order granting the relief requested.

(2) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be filed.

(3) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating the facts.

(4) Every motion, the grounds of which depend upon the existence of facts which the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(5) A motion, other than to reopen pursuant to KRS 342.125 or for interlocutory relief, shall be considered ten (10) days after the date of filing. A response shall be considered if filed on or before the tenth day after the filing of the motion.

(6)(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:

- 1. A current medical release Form 106 executed by the plaintiff;
- 2. An affidavit evidencing the grounds to support reopening;
- 3. A current medical report showing a change in disability established by objective medical findings;
- 4. A copy of the opinion and award, settlement, voluntary agreed order or agreed resolution sought to be reopened;
- 5. An affidavit certifying that a previous motion to reopen has not been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed;
- 6. A designation of evidence from the original record specifically identifying the relevant items of proof which are to be considered as part of the record during reopening; or
- 7. A certification of service that the motion was served on all parties as well as counsel for the parties.

(b)1. A designation of evidence made by a party shall list only those items of evidence from the original record that are relevant to the matters raised on reopening.

2. The burden of completeness of the record shall rest with the parties to include so much of the original record, up to and including the award or order on reopening, as is necessary to permit the administrative law judge to compare the relevant evidence that existed in the original record with all subsequent evidence submitted by the parties.

3. Except for good cause shown at the time of the filing of the designation of evidence, a party shall not designate the entire original record from the claim for which reopening is being sought.

(c)1. A motion to reopen shall not be considered until twenty-five (25) days after the date of filing.

2. Any response shall be filed within twenty (20) days of filing the motion to reopen.

3. A response may contain a designation of evidence specifically identifying evidence from the original record not already listed by the moving party that is relevant to matters raised in a response.

(d) Any party may use the following forms provided by the department for motions to reopen:

- 1. Motion to reopen by employee;
- 2. Motion to reopen by defendant; and
- 3. Motion to reopen KRS 342.732 benefits.

(7) A motion for allowance of a plaintiff's attorney fee shall:

(a) Be made within thirty (30) days following the finality of the award, settlement or agreed resolution upon which the fee request is based;

(b) Be served upon the adverse parties and the attorney's client;

(c) Set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS

342.320; and

(d) Be accompanied by:

1. An affidavit of counsel detailing the extent of the services rendered and the time expended;
2. A signed and dated Form 109 as required by KRS 342.320(5); and
3. A copy of the signed and dated contingency fee contract.

(8) A motion for allowance of defendant's attorney's fee shall be:

(a) Filed within thirty (30) days following the finality of the decision; and

(b) Accompanied by an affidavit of counsel detailing:

1. The extent of the services rendered and the time expended;
2. The hourly rate and total amount to be charged; and
3. The date upon which agreement was reached for providing the legal services.

(9) The following motions relating to vocational rehabilitation training provided by the department may be used by all parties:

(a) Petition for vocational rehabilitation training; and

(b) Joint motion and agreement to waive vocational rehabilitation evaluation.

Section 5. Application for Resolution of an Injury Claim and Response. (1) To apply for resolution of an injury claim, the applicant shall file Form 101 with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of injury;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report ~~[on Form 107-L]~~ which shall include the following:

1. A description of the injury which is the basis of the claim;
2. A medical opinion establishing a causal relationship between the work-related events or the medical condition which is the subject of the claim; and
3. If a psychological condition is alleged, an additional medical report ~~[on Form 107-P]~~ establishing the presence of a mental impairment or disorder.

4. Medical reports required under this paragraph may consist of legible, hand-written notes of a treating physician;

(e) Documentation substantiating the plaintiff's preinjury and postinjury wages; and

(f) Documentation establishing additional periods for which temporary total disability benefits are sought.

(2)(a) Defendant shall file a notice of claim denial or acceptance on a Form 111 - Injury and Hearing Loss within forty-five (45) days after the notice of the scheduling order ~~[filing of an application for resolution of claim]~~ or within forty-five (45) days following an order sustaining a motion to reopen a claim.

(b) If a Form 111 is not filed, all allegations of the application shall be deemed admitted.

(c) The Form 111 shall set forth the following:

1. All pertinent matters which are admitted and those which are denied;
2. If a claim is denied in whole or in part, a detailed summary of the basis for denial;
3. The name of each witness whose testimony may be relevant to that denial; and
4. A description of the physical requirements of plaintiff's job at the time of the alleged injury and the name, address and telephone number of the individual responsible for gathering this information for the employer and its insurer.

(d) In addition to the Form 111, a defendant shall file a special answer to raise any special defenses in accordance with this paragraph.

1. A defendant may incorporate special defenses that have been timely raised in the Form 111.

2. A "special answer" shall be filed within:

a. Forty-five (45) days of the scheduling order ~~[notice of filing an~~

~~application for resolution of claim]~~; or

b. Ten (10) days after discovery of facts supporting the defense if discovery could not have been had earlier in the exercise of due diligence.

3. A special defense shall be waived if not timely raised.

4. A special defense shall be pleaded if the defense arises under:

a. KRS 342.035(3), unreasonable failure to follow medical advice;

b. KRS 342.165, failure to comply with safety laws;

c. KRS 342.316(7) or 342.335, false statement on employment application;

d. KRS 342.395, voluntary rejection of KRS Chapter 342;

e. KRS 342.610(3), voluntary intoxication or self-infliction of injury;

f. KRS 342.710(5), refusal to accept rehabilitation services; or

g. Running of periods of limitations or repose under KRS 342.185, 342.270, 342.316, or other applicable statute.

Section 6. Application for Resolution of an Occupational Disease Claim and Response. (1) To apply for resolution of an occupational disease claim, the applicant shall file Form 102 with the following completed attachments:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of last exposure and all jobs in which plaintiff alleges exposure to the hazards of the occupational disease;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report ~~[on Form 108-OD]~~ supporting the existence of occupational disease. For coal related pneumoconiosis claims, the medical report shall ~~[be on Form 108-CWP and]~~ include both a chest x-ray examination and spirometric tests if pulmonary dysfunction is alleged; and

(e) Social Security earnings record release form (Form 115).

(2)(a) Defendant shall file a notice of claim denial or acceptance on a Form 111-OD:

1. Within forty-five (45) days after the notice of the scheduling order ~~[filing of an application for resolution of claim]~~; and

2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.

(b) In addition to the Form 111-OD, a defendant shall file a special answer to raise any special defenses in accordance with Section 5(2)(d) of this administrative regulation.

(3) For all occupational disease and hearing loss claims, the commissioner shall promptly schedule an examination pursuant to KRS 342.315 and 342.316.

Section 7. Application for Resolution of a Hearing Loss Claim and Response. (1) To apply for resolution of a hearing loss claim, the applicant shall file Form 103 with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the last date of noise exposure;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for hearing loss or ear complaints;

(c) Medical release (Form 106);

(d) One (1) medical report ~~[on Form 108-HL]~~ describing the hearing loss which is the basis of the claim and, if a psychological condition is alleged, an additional medical report ~~[on Form 107-P]~~ establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of legible, hand-written notes of a treating physician; and

(e) Social Security earnings record release form (Form 115).

(2)(a) Defendant shall file a notice of claim denial or acceptance on a Form 111 - Injury and Hearing Loss:

1. Within forty-five (45) days after the notice of the scheduling order ~~(filing of an application for resolution of claim)~~; and

2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.

(b) In addition to the Form 111 - Injury and Hearing Loss, a defendant shall file a special answer to raise any special defenses in accordance with Section 5(2)(d) of this administrative regulation.

Section 8. Discovery, Evidence, and Exchange of Records. (1) Proof taking and discovery for all parties shall begin from the date of issuance by the commissioner of the scheduling order ~~(of assignment)~~.

(2)(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the scheduling order ~~(of assignment)~~;

(b) After the sixty (60) day period, defendants shall take proof for an additional thirty (30) days; and

(c) After the defendant's thirty (30) day period, the plaintiff shall take rebuttal proof for an additional fifteen (15) days.

(3) During the pendency of a claim, any party obtaining or possessing a medical or vocational report or records shall serve a copy of the report or records upon all other parties within ten (10) days following receipt of those reports or records or within ten (10) days of receipt of notice if assigned to an administrative law judge.

(4) All medical reports filed with Forms 101, 102, or 103 shall be admitted into evidence without further order;

(a) If an objection is not filed prior to or with the filing of the Form 111; and

(b) If the medical reports comply with Section 10 of this administrative regulation [within ten (10) days of the scheduling order].

Section 9. Vocational Reports. (1) A vocational report may be filed by notice and shall be admitted into evidence without further order and without the necessity of a deposition, if an objection is not filed.

(2) Vocational reports shall be signed by the individual making the report.

(3) Vocational reports shall include, within the body of the report or as an attachment, a statement of the qualifications of the person making the report.

(4) An objection to the filing of a vocational report shall:

(a) Be filed within ten (10) days of the filing of the notice or motion for admission; and

(b) State the grounds for the objection with particularity.

(5) The administrative law judge shall rule on the objection within fifteen (15) days.

(6) If a vocational report is admitted as direct testimony, an adverse party may depose the reporting vocational witness ~~(physician)~~ in a timely manner as if on cross-examination at its own expense.

Section 10. Medical Reports. (1) A party shall not introduce direct testimony from more than two (2) physicians by medical report except upon a showing of good cause and prior approval by an administrative law judge.

(2) Medical reports shall be submitted on Form 107-I (injury), Form 107-P (psychological), Form 108-OD (occupational disease), Form 108-CWP (coal workers' pneumoconiosis), or Form 108-HL (hearing loss), as appropriate, except that an administrative law judge may permit the introduction of other reports.

(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or submitting party or representative verifying the authenticity of the report.

(4) Medical reports shall include, within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician has been assigned a medical qualifications index number, reference may be made to the physicians index number in lieu of attaching qualifications.

(5) Narratives in medical reports shall be typewritten. Other portions, including spirometric tracings, shall be clearly legible.

(6)(a) Upon notice, a party may file the testimony of two (2) physicians, either by deposition or medical report, which shall be admitted into evidence without further order if an objection is not filed.

(b) Objection to the filing of a medical report shall be filed within ten (10) days of the filing of the notice or the motion for admission.

(c) Grounds for the objection shall be stated with particularity.

(d) The administrative law judge shall rule on the objection within fifteen (15) days of filing.

(7) If a medical report is admitted as direct testimony, an adverse party may depose the reporting physician in a timely manner as if on cross-examination at its own expense.

Section 11. Medical Evaluations Pursuant to KRS 342.315. (1) All persons claiming benefits for coal workers' pneumoconiosis pursuant to KRS 342.732, hearing loss, or occupational disease shall be referred by the commissioner for a medical evaluation in accordance with contracts entered into between the commissioner and the University of Kentucky and University of Louisville medical schools.

(2) Upon all other claims, the commissioner or an administrative law judge may direct appointment by the commissioner of a university medical evaluator.

(3) Upon referral for medical evaluation under this section, a party may tender additional relevant medical information to the university medical school to whom the evaluation is assigned. This additional information shall not be filed of record. The additional medical information shall be:

(a) Submitted to the university within fourteen (14) days following an order for medical evaluation pursuant to KRS 342.315;

(b) Submitted by way of medical reports, notes, or depositions;

(c) Clearly legible;

(d) Indexed;

(e) Furnished in chronological order;

(f) Timely furnished to all other parties within ten (10) days following receipt of the medical information; and

(g) Accompanied by a summary that is filed of record and served upon all parties. The summary shall:

1. Identify the medical provider;

2. Include the date of medical services; and

3. Include the nature of medical services provided.

(4) Upon the scheduling of an evaluation, the commissioner shall provide notice to all parties and the employer shall forward to the plaintiff necessary travel expenses as required by KRS 342.315(4). Upon completion of the evaluation, the commissioner shall provide copies of the report to all parties and shall file the original report in the claim record to be considered as evidence.

(5) The administrative law judge shall allow timely cross-examination of a medical evaluator appointed by the commissioner at the expense of the moving party.

(6) Unjustified failure by the plaintiff to attend the scheduled medical evaluation may be grounds for dismissal, payment of a no-show fee, sanctions, or all of the above.

(7) Failure by the employer or its insurance carrier to pay travel expenses within seven (7) days of notification of a scheduled medical evaluation may be grounds for imposition of sanctions.

Section 12. Interlocutory Relief. (1) During a claim, a party may seek interlocutory relief through:

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(a);

(b) Medical benefits pursuant to KRS 342.020; or

(c) Rehabilitation services pursuant to KRS 342.710;

(2) Upon motion of any party, an informal conference:

(a) Shall be held to review plaintiff's entitlement to interlocutory relief; and

(b) May be held telephonically.

(3) Any response to a request for interlocutory relief shall be served within twenty (20) days from the date of the request and thereafter, the request shall be ripe for a decision.

(4) ~~(3)~~(a) Entitlement to interlocutory relief shall be shown by means of affidavit, deposition, or other evidence of record demonstrating the requesting party:

1. Is eligible under KRS Chapter 342; and

2. Will suffer irreparable injury, loss or damage pending a final decision on the application.

(b) Rehabilitation services may be ordered while the claim is pending upon showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(5) ~~[(4)]~~ If interlocutory relief is awarded in the form of income benefits, the application shall be placed in abeyance unless a party shows irreparable harm will result. The administrative law judge may require periodic reports as to the physical condition of the plaintiff. Upon motion and a showing of cause, or upon the administrative law judge's own motion, interlocutory relief shall be terminated and the claim removed from abeyance.

(6) ~~[(5)]~~ An attorney's fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

(7) ~~[(6)]~~ A party seeking interlocutory relief may use the following forms:

- (a) Motion for interlocutory relief, Form MIR-1;
- (b) Affidavit for payment of medical expenses, Form MIR-2;
- (c) Affidavit for payment of temporary total disability, Form MIR-3; and
- (d) Affidavit regarding rehabilitation services, Form MIR-4.

Section 13. Benefit Review Conferences. (1) ~~A benefit review conference shall be held not less than forty-five (45) days and not more than seventy-five (75) days after the notice of filing is issued by the commissioner.~~

~~(2)~~ The purpose of the benefit review conference shall be to expedite the processing of the claim and to avoid if possible the need for a hearing.

(2) ~~[(3)]~~ The benefit review conference shall be an informal proceeding.

(3) The date, time, and place for the benefit review conference shall be stated on the scheduling order issued by the commissioner.

(4) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the benefit review conference.

(5) If the defendant is insured or a qualified self-insured, a representative of the carrier with settlement authority shall be present or available by telephone during the benefit review conference.

(6) The administrative law judge may upon motion waive the plaintiff's attendance at the benefit review conference for good cause shown.

(7) A transcript of the benefit review conference shall not be made.

(8) Representatives of all parties shall have authority to resolve disputed issues and settle the claim at the benefit review conference.

(9)(a) Defendant shall provide a completed Form AWW-1, Average Weekly Wage Form.

(b) Plaintiff shall bring copies of unpaid medical bills and documentation of out-of-pocket expenses-including travel for medical treatments.

(c) Each defendant shall bring copies of disputed medical bills and medical expenses.

(10) Ten (10) days before the benefit review conference, the parties shall exchange final stipulations and lists of known witnesses and exhibits that:

- (a) Name each proposed witness;
- (b) Summarize the anticipated testimony of each witness; and
- (c) For medical witnesses, the summary shall include:
  - 1. The diagnosis reached;
  - 2. Clinical findings and results of diagnostic studies upon which the diagnosis is based;
  - 3. The functional impairment rating assessed by the witness; and
  - 4. Describe any work-related restrictions imposed.
- (d) Identify any exhibits.

(11) At the benefit review conference, the parties shall:

- (a) Attempt to resolve controversies and disputed issues;
- (b) Narrow and define disputed issues; and

(c) Facilitate a prompt settlement.

(12) ~~[(44)]~~ A party seeking postponement of a benefit review conference shall file a motion at least fifteen (15) days prior to the date of the conference and shall demonstrate good cause for the postponement.

(13) ~~[(42)]~~ If at the conclusion of the benefit review conference the parties have not reached agreement on all the issues, the administrative law judge shall:

(a) Prepare a summary stipulation of all contested and uncontested issues which shall be signed by representatives of the parties and by the administrative law judge; and

(b) Schedule a final ~~1. A prehearing conference to be held at the conclusion of the presentation of proof; or~~

~~2. A hearing.~~

(14) ~~[(43)]~~ Only contested issues shall be the subject of further proceedings.

(15) Upon motion with good cause shown, the administrative law judge may order that additional discovery or proof be taken between the benefit review conference and the date of the hearing and may limit the number of witnesses to be presented at hearing.

Section 14. Evidence - Rules Applicable. (1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply in all proceedings before an administrative law judge except as varied by specific statute and this administrative regulation.

(2) Any party may file as evidence before the administrative law judge pertinent material and relevant portions of hospital, educational, Office of Vital Statistics, Armed Forces, Social Security, and other public records. An opinion of a physician which is expressed in these records shall not be considered by an administrative law judge in violation of the limitation on the number of physician's opinions established in KRS 342.033.

Section 15. Extensions of Proof Time. (1) An extension of time for producing evidence may be granted upon showing of circumstances that prevent timely introduction.

(2) A motion for extension of time shall be filed no later than five (5) days before the deadline sought to be extended.

(3) The motion or supporting affidavits shall set forth:

- (a) The efforts to produce the evidence in a timely manner;
- (b) Facts which prevented timely production; and
- (c) The date of availability of the evidence, the probability of its production, and the materiality of the evidence.

(4) In the absence of compelling circumstances, only one (1) extension of thirty (30) days shall be granted to each side for completion of discovery or proof by deposition.

(5) The granting of an extension of time for completion of discovery or proof shall:

- (a) Enlarge the time to all:
  - 1. Plaintiffs if the extension is granted to a plaintiff; and
  - 2. Defendants if an extension is granted to a defendant; and
- (b) Extend the time of the adverse party automatically except if the extension is for rebuttal proof.

Section 16. Stipulation of Facts. (1) Refusal to stipulate facts which are not genuinely in issue shall warrant imposition of sanctions as established in Section 25 of this administrative regulation. An assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

(2) Upon cause shown, a party may be relieved of a stipulation if the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous.

(3) Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 17. Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except for Civil Rules 27, 33, and 36 which shall not apply to practice before the administrative law judges or the board.



(2) Depositions may be taken by telephone if the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of a telephonic deposition shall relate the following information:

- (a) That the deposition is to be taken by telephone;
  - (b) The address and telephone number from which the call will be placed to the witness;
  - (c) The address and telephone number of the place where the witness will answer the deposition call; and
  - (d) Opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party shall contribute proportionate costs of the conference call.
- (3) The commissioner shall establish a medical qualifications index.
- (a) An index number shall be assigned to a physician upon the filing of the physician's qualifications.
  - (b) Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications.
  - (c) Qualifications shall be revised or updated by submitting revisions to the commissioner.
  - (d) A party may inquire further into the qualifications of a physician.

Section 18. ~~[Prehearing Conferences. (1) If an administrative law judge determines it is necessary, a prehearing conference shall be held at the conclusion of the proof time.~~

~~(2)(a) Ten (10) days prior to the prehearing conference, the plaintiff shall convey in writing to the defendant a reasonable settlement proposal.~~

~~(b) Five (5) days prior to the prehearing conference, the defendant shall respond in writing to the plaintiff concerning the plaintiff's settlement proposal.~~

~~(3) Ten (10) days prior to the prehearing conference, parties shall exchange final stipulations and lists of known exhibits and witnesses that:~~

- ~~(a) Identify each exhibit and witness;~~
- ~~(b) Summarize the anticipated testimony of each witness;~~
- ~~(c) For medical witnesses, includes in the summary:~~
  - ~~1. The diagnosis reached;~~
  - ~~2. Clinical findings and results of diagnostic studies upon which the diagnosis is based;~~
  - ~~3. The permanent impairment rating as defined in KRS 342.0011(35); and~~
  - ~~4. A description of any work-related restrictions imposed; and~~
  - ~~(d) For stipulations by the plaintiff, certifies that the plaintiff has complied with subsection (2) of this section.~~

~~(4) If the defendant is insured or a qualified self-insured, a representative of the carrier with settlement authority shall be present or available by telephone during the prehearing conference.~~

- ~~(5) At the prehearing conference, the parties shall:~~
  - ~~(a) Attempt to resolve controversies and disputed issues;~~
  - ~~(b) Narrow and define disputed issues; and~~
  - ~~(c) Facilitate a prompt settlement.~~
- ~~(6) If at the conclusion of the prehearing conference the parties have not reached agreement on all issues, the administrative law judge shall:~~

- ~~(a) Prepare a summary stipulation of all contested and uncontested issues not previously stipulated at the benefit review conference which shall be signed by representatives of the parties and by the administrative law judge; and~~
- ~~(b) Schedule a final evidentiary hearing.~~
- ~~(7) Only contested issues shall be the subject of further proceedings.~~

Section 19. ~~Hearings. (1) [(a) If a prehearing conference is not held, the plaintiff shall, ten (10) days prior to the hearing, convey in writing to the defendant a reasonable settlement proposal.~~

~~(b) Five (5) days prior to the hearing, the defendant shall respond in writing to the plaintiff concerning the plaintiff's settlement proposal.~~

~~(2) If a prehearing conference is not held, ten (10) days prior to~~

~~the hearing, parties shall exchange final stipulations and lists of known exhibits and witnesses that:~~

- ~~(a) Identify each exhibit and witness;~~
- ~~(b) Summarize the anticipated testimony of each witness;~~
- ~~(c) For medical witnesses, includes in the summary:~~
  - ~~1. The diagnosis reached;~~
  - ~~2. Clinical findings and results of diagnostic studies upon which the diagnosis is based;~~
  - ~~3. The permanent impairment rating as defined in KRS 342.0011(35) and assessed by the witness; and~~
  - ~~4. A description of any work-related restrictions imposed; and~~
  - ~~(d) For stipulations by the plaintiff, certifies that the plaintiff has complied with subsection (1) of this section.~~

~~(3) If the defendant is insured or a qualified self-insured, a representative of the carrier with settlement authority shall be present or available by telephone during the hearing.~~

~~(4) At the hearing, the parties shall present proof concerning contested issues. If the plaintiff or plaintiff's counsel fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.~~

~~(2) [(5) At the conclusion of the hearing, the claim shall be taken under submission immediately or briefs may be ordered.~~

~~(3) [(6) Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages. Permission to increase the length of a brief shall be sought by motion.~~

~~(4) [(7) The administrative law judge may announce his decision at the conclusion of the hearing or shall defer decision until rendering a written opinion.~~

~~(5) [(8) A decision shall be rendered no later than sixty (60) days following the hearing.~~

~~(6) [(9) The time of filing a petition for reconsideration or notice of appeal shall not begin to run until after the "date of filing" of the written opinion.~~

~~(7) [(10) An opinion or other final order of an administrative law judge shall not be deemed final until the administrative law judge has certified that a certification of mailing was sent to:~~

- ~~(a) An attorney who has entered an appearance for a party; or~~
  - ~~(b) The party if an attorney has not entered an appearance.~~
- ~~[(11) If the opinion or other final order of the administrative law judge fails to show certification of mailing to an attorney for a party who has entered an appearance or if an attorney has not entered an appearance certification of mailing upon a named party, the opinion or final order shall not be deemed filed until the certification has occurred.]~~

~~(8) [(12) The parties with approval of the administrative law judge may waive a final hearing. Waiver of a final hearing shall require agreement of all parties and the administrative law judge. The claim shall be taken under submission as of the date of the order allowing the waiver of hearing. A decision shall be rendered no later than sixty (60) days following the date of the order allowing the waiver of hearing.~~

Section 19. ~~[20.] Petitions for Reconsideration. (1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the filing of a final order or award of an administrative law judge, clearly stating the patent error which the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies. The party filing the petition for reconsideration shall tender a proposed order granting the relief requested.~~

~~(2) A response shall be served within ten (10) days after the date of filing of the petition.~~

~~(3) The administrative law judge shall act upon the petition within ten (10) days after the response is due.~~

Section 20. ~~[24.] Benefit Calculations for Settlements. (1) For computing lump sum settlements, the employer shall utilize the prescribed discount rate for its weeks of liability only, not for the entire award period. A discount shall not be taken on past due benefits by the employer or Special Fund. Lump sum settlements shall be calculated as follows:~~

- ~~(a) Determine the entire lump sum liability:~~
  - ~~1. Compute the remaining weeks of liability in the award by subtracting the number of weeks past due from the entire number of~~



weeks in the award;

2. Discount the number of weeks remaining in the award at the prescribed discount rate;

3. Multiply the weekly benefit rate by the discounted number of weeks remaining (subparagraph 2 of this paragraph) in the award. This product shall equal the entire future lump sum liability for the award; and

4. Add the amount of past due benefits to the future lump sum liability award (subparagraph 3 of this paragraph). The sum shall represent the entire lump sum value of the award.

(b) Determine the employer's lump sum liability as follows:

1. The employer's future liability shall be computed by determining its total weeks of liability less the number of weeks of liability past due.

2. The number of weeks remaining shall be discounted at the prescribed discount rate and multiplied by the amount of the weekly benefit.

3. Multiply the number of past due weeks by the amount of the weekly benefit.

4. The employer's entire liability for a lump sum payment shall be determined by adding the results of paragraph (b)2 and 3 of this subsection.

(c) Determine the Special Fund's portion of the lump sum liability by subtracting the value of the employer's liability in lump sum (paragraph (b) of this subsection) from the entire value of the lump sum settlement (paragraph (a) of this subsection). The remainder shall be the Special Fund's lump sum liability.

(2) If the employer settles its liability for income benefits with the employee for a lump sum payment and a determination is made of the Special Fund's liability, the Special Fund's portion of income benefits shall be paid commencing with the date of approval of the employer's settlement and continuing for the balance of the compensable period.

(3) In computing settlements involving periodic payments, the employer shall pay its liability over the initial portion of the award, based on the number of weeks its liability bears to the entire liability for the claim. The Special Fund shall make all remaining payments for the balance of the compensable period.

(4) Pursuant to KRS 342.265, election by the Special Fund to settle on the same terms as the employer shall mean the Special Fund agrees to settle in the same manner as the employer in either a discounted lump sum or in periodic payments based upon its proportionate share of the permanent disability percentage paid by the employer. "Same terms" shall not include any additional payments the employer included for buy out of medical expenses, temporary total disability, rehabilitation, or other benefits for which the Special Fund is not liable.

(5) Parties involved in a lump-sum settlement of future periodic payments shall use the discount factor computed in accordance with KRS 342.265(3).

#### Section 21. ~~22.~~ Review of Administrative Law Judge Decisions.

(1) General.

(a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of an envelope containing documents filed in an appeal to the board.

(2) Time and format of notice of appeal. ~~(Time for petition.)~~

(a) Within thirty (30) days of the date upon which the administrative law judge enters a final award, order, or decision pursuant to KRS 342.275(2), any party aggrieved by that award, order or decision may file a notice of ~~(petition for)~~ appeal to the Workers' Compensation Board.

(b) As used in this section, a final award, order or decision shall be determined in accordance with Civil Rule 54.02(1) and (2).

(c) The notice of appeal shall:

1. Denote the appealing party as the petitioner;

2. Denote all parties against whom the appeal is taken as respondents;

3. Name the administrative law judge who rendered the order appealed from as a respondent;

4. If appropriate pursuant to KRS 342.120 or 342.1242, name the director of the Workers Compensation Fund as a respondent; and

5. Include the claim number.

(d) Cross-appeal.

1. Any party may file a cross-appeal through notice of cross-appeal filed within ten (10) days after the notice of appeal is served.

2. A cross-appeal shall designate the parties as stated in the notice of appeal.

(e) Failure to file the notice ~~(petition)~~ within the time allowed shall require dismissal of the ~~appeal (petition)~~.

(f) ~~(e)~~ The commissioner shall issue an acknowledgement to all parties of the filing of a notice of appeal or cross-appeal ~~(petition for review or a cross-petition)~~.

(3) Number of copies and format of petitioner's brief.

(a) The petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal.

(b) An original and two (2) copies of the petitioner's brief ~~(petition)~~ shall be filed with the Commissioner of the Department of Workers' Claims.

(c) ~~(b)~~ The petitioner's brief ~~(petition)~~ shall conform in all respects to Civil Rule 7.02(4).

(4) Petitioner's brief ~~(Petition)~~. The petitioner's brief ~~(petition)~~ shall designate the parties as petitioner (or petitioners) and respondent (or respondents) and shall be drafted in the following manner:

(a)1. The name of each petitioner and each respondent shall be included in the brief ~~(petition)~~.

2. The petitioner shall specifically designate as respondents all adverse parties.

3. The administrative law judge who rendered the order appealed from shall be named as a respondent.

(b) The workers' compensation claim number, or numbers, shall be set forth in all pleadings before the Workers' Compensation Board.

(c) The petitioner's brief ~~(petition)~~ shall state the date of entry of the final decision by the administrative law judge.

(d) The petitioner's brief ~~(petition)~~ shall state whether any matters remain in litigation between the parties in any forum or court other than those for which an appeal is being sought.

(e) The petitioner's brief ~~(petition)~~ shall include a "Need for Oral Argument" designating whether the party requests an argument to be heard orally before the board and, if so, a brief statement setting out the reason or reasons for the request.

(f) The petitioner's brief ~~(petition)~~ shall include a "Statement of Benefits Pending Review" which shall set forth whether the benefits designated to be paid by the opinion, award or order for which review is being sought have been instituted pursuant to KRS 342.300.

(g) The organization and contents of the petitioner's brief ~~(petition)~~ for review shall be as follows:

1. A brief "Introduction" shall indicate the nature of the case.

2. A "Statement of Points and Authorities" shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the petitioner's contentions with respect to each issue of law on which he relies for a reversal, listing under each the authority cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited.

3. A "Statement of the Case" shall consist of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample reference to the specific pages of the record supporting each of the statements narrated in the summary.

4. An "Argument" shall:

a. Conform with the statement of points and authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law; and

b. Contain, at the beginning of the argument, a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

5. A "Conclusion" shall set forth the specific relief sought from the board.

6. An "Appendix" shall contain:

a. Copies of the final award, ~~(or)~~ order, or decision of the administrative law judge from which review is being sought;

b. Any petitions for reconsideration filed by the parties pursuant

to KRS 342.281;

c. The administrative law judge's order addressing any petitions for reconsideration;

d. Copies of cases cited from federal courts and foreign jurisdictions, if any, upon which reliance is made; and

e. Copies of prior board opinions or nonfinal or unpublished opinions of the Court of Appeals or Supreme Court in accordance with subsection (10) of this section.

(5) Respondent's brief [~~Response to petition~~].

(a) Each respondent shall file an original and two copies of a brief [~~response to the petition~~] within thirty (30) [~~twenty (20)~~] days of the date on which the petitioner's brief [~~petition~~] was filed with the Commissioner of the Department of Workers' Claims.

(b) The respondent's brief [~~A response~~] shall include a "Need for Oral Argument" similar to the statement required of the petitioner by subsection (4)(e) of this section.

(c) The respondent's brief [~~A response~~] shall include a "Statement of Benefits Pending Review" similar to the statement required of the petitioner by subsection (4)(f) of this section.

(d) Respondent's counter-argument shall follow the organization and content of the petitioner's brief [~~petition for review~~] as set forth in subsection (4)(g) of this section.

(6) Reply brief.

(a) If applicable, the petitioner may file a reply brief within ten (10) days after the date on which the respondent's brief [~~last response~~] was served or due, whichever is earlier.

(b) The organization and contents of the reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an index, or contents page shall not be required.

(7) Certification. The petitioner's brief, respondent's brief [~~petition, response~~], and reply brief shall be signed by each party or his counsel and that signature shall constitute a certification that the statements contained in the document are true and made in good faith.

(8) Service of notice of appeal, cross-appeal, petitioner's brief, respondent's brief, [~~petitions for review, cross-petitions, responses~~] and reply briefs on adverse parties.

(a) Before filing a notice of appeal, cross-appeal, or any brief [~~petition for review, cross-petition, response, or reply brief~~] with the Commissioner of the Department of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, a copy of the document on each adverse party.

(b) Every document filed with the Workers' Compensation Board [~~petition for review, cross-petition, response, or reply brief~~] shall bear, on the front cover, a signed statement, in accordance with Civil Rule 5.03 by the attorney or party that service has been made as required by paragraph (a) of this subsection. The statement shall identify by name each person served.

(c) The name of each attorney submitting a document to the Workers' Compensation Board [~~petition for review, cross-petition, response, or reply brief~~] with a current address and telephone number shall appear following its "conclusion".

(d) If the respondent is also a cross-petitioner, the respondent may file a combined brief which shall address issues raised by the cross-appeal.

(9) Cross-petition.

(a) Any party designated as a respondent may file a cross-petition within twenty (20) days following the filing of the petition.

(b) The cross-petition shall state the name of each cross-petitioner and each cross-respondent and the names, addresses, and telephone numbers of their respective counsel.

(c) If the respondent is also a cross-petitioner, a combined brief shall address issues raised by the cross-appeal.

(d) 1. The cross-petition shall follow the same organization and contents as a petition for review established in subsection (4) of this section.

2. The cross-petition shall be signed in accordance with subsection (7) of this section, and shall be served in accordance with subsection (8) of this section.

3. A response to a cross-petition for review shall be filed within twenty (20) days of the filing of the cross-petition and shall follow the same organization and contents as a response pursuant to subsection (5) of this section.

(e) If a cross-appeal has been filed, the cross-petitioner's reply

brief may be served within ten (10) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier.

(10) Form of citations.

(a) All citations of Kentucky statutes and reported decisions of the Court of Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(g).

(b) If a party believes that a prior decision of the board or an unpublished decision by the Court of Appeals or Supreme Court has precedential value in relation to a material issue in the case being reviewed and there is no published opinion that would serve as well, that decision may be cited if the party serves a copy on all other parties and the board.

(c) Service of an unpublished decision shall be accomplished by including a copy of the decision in the appendix for a brief filed with the board [~~to the petition for review, cross-petition, response, or reply brief~~].

(d) Citations for prior decisions of the board or unpublished decisions of the Court of Appeals or Supreme Court shall include the style of the case, the appropriate claim or case number, and the date the decision was rendered.

(11) Number of pages.

(a) The petitioner's brief [~~petition for review~~] and the respondent's brief [~~response~~] shall be limited to twenty (20) pages each.

(b) Reply briefs shall be limited to five (5) pages.

(c) Combined briefs shall be limited to twenty-five (25) pages.

(d) The parties shall make every effort to comply with the above page limitations.

(e) Permission to increase the length of a brief shall be sought by motion, but shall only be granted upon a showing of good cause.

(12) Sanctions. Failure of a party to file a brief [~~petition, cross-petition, or response~~] conforming to the requirements of this administrative regulation or failure of a party to timely file a response may be grounds for the imposition of one (1) or more of the following sanctions:

(a) Affirmation or reversal of the final order;

(b) Rejection of a brief [~~petition, cross-petition or response~~] that does not conform as to organization or content, with leave to refile in proper form within ten (10) days of the date returned. If timely refile occurs, the filing shall date back to the date of the original filing;

(c) Striking of an untimely response;

(d) A fine of not more than \$500; or

(e) Dismissal.

(13) Motions.

(a) A motion or pleading [~~Except for a petition, cross-petition, or response, a motion or pleading~~] shall require [~~only~~] the original to be filed with the Commissioner of the Department of Workers' Claims.

(b) The style of the case, including the claim number and title of the motion or pleading, shall appear on the first page of the motion or pleading.

(c) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in response. To be considered, a response shall be filed within ten (10) days of the motion. Further responses shall not be filed.

(d) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating those facts.

(e) Every motion and response, the grounds of which depend upon the existence of facts which the moving or responding party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(f) Before filing a motion or pleading with the Commissioner of the Department of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, a copy of the document on each adverse party.

(g) The filing of a motion to dismiss an [~~a petition for~~] appeal shall stay the remaining time for the filing of a responsive pleading. If the petitioner's brief has been previously filed and a motion to dismiss has been overruled, the respondent shall have fifteen (15) days to file a respondent's brief. [~~petition. If the motion to dismiss is overruled, respondents shall have fifteen (15) days from the date of the order overruling in which to file its responsive petition.~~]

(h) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of a

motion. An intermediate order may be issued on the signature of any board member.

(14) Oral arguments.

(a) Upon motion of a party or upon the board's own motion, the board may order an oral argument on the merits in a case appealed from a decision ~~(an opinion)~~, award or order of an administrative law judge.

(b) Oral arguments shall occur on a date and at a time and location specified by the board.

(c) Appeals designated for oral argument shall be held in abeyance and all subsequent appeal time in the case shall be calculated from the date of the oral argument ~~(instead of the date of the filing of the petition for review)~~.

(15) Continuation of benefits pending appeal.

(a) Benefits awarded by an administrative law judge which are not contested shall be paid during the pendency of an appeal. A motion requesting the payment of these benefits shall not be required. Uncontested benefits shall include income benefits at an amount lesser than what was awarded if the issue on appeal addresses the amount of benefits to be awarded as opposed to the entitlement to income benefits.

(b) Upon the motion of a party pursuant to KRS 342.300, the board may order payment of benefits pending appeal in conformity with the award, decision ~~(judgment)~~, or order appealed from.

(c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion establishing that:

1. The probability of the existence in fact of:

a. Financial loss;  
b. Privation, suffering, or adversity resulting from insufficient income; or

c. Detriment to the moving party's property or health if payment of benefits is not instituted; and

2. There exists a reasonable likelihood that the moving party will prevail on appeal.

(d) Any response to a motion for continuation of an award pending appeal shall be served within ten (10) days from the date of the request and, thereafter, the request shall be ripe for a decision.

(e) Entitlement to relief by the moving party and responses shall be shown by:

1. Affidavit if the grounds for the motion or response depend upon the existence of facts not in evidence; or

2. Supporting memorandum citing to evidence existing within the record and making reference to the place in the record where that evidence is found.

(16) Decisions.

(a) The board shall:

1. Enter its decision affirming, modifying, or setting aside the order appealed from; or

2. Remand the claim to an administrative law judge for further proceedings.

(b) Motions for reconsideration shall not be permitted.

(c) The decision of the administrative law judge shall be affirmed if:

1. A board member is unable to sit on a decision; and

2. The remaining two (2) board members cannot reach an agreement on a final disposition.

(17) Appeal from board decisions. If applicable, pursuant to KRS 342.290 the decision of the board shall be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

Section 22. ~~[23.]~~ Coverage - Insured Status. Upon the filing of an application for resolution of claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify as a self-insurer, the commissioner shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section 23. ~~[24.]~~ Withdrawal of Records. (1) A portion of any original record of the department shall not be withdrawn except upon an order of the commissioner, an administrative law judge, or a member of the board.

(2)(a) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final.

(b) A party filing an exhibit may make arrangements to claim an exhibit prior to that time.

(c)1. If an unclaimed exhibit has no money value, it shall be destroyed.

2. If an unclaimed exhibit has a value of more than \$100, it shall be sold as surplus property.

3. If an unclaimed exhibit has a value of less than \$100, it shall be donated to the appropriate state agency.

4. If an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 24. ~~[25.]~~ Sanctions. (1) Pursuant to KRS 342.310, an administrative law judge or the board may assess costs upon determination that proceedings have been brought, prosecuted, or defended without reasonable grounds.

(2) A sanction may be assessed against an offending attorney or representative rather than against the party.

(3) If a party is a governmental agency and attorney's fees are assessed, the fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of similar services had a private attorney been retained.

(4) Failure of a party to timely file a pleading or document or failure to comply with the procedures required by this administrative regulation may be treated by an administrative law judge or the board as prosecuting or defending without reasonable grounds.

~~[(5) In addition to assessment of costs pursuant to KRS 342.310, failure to comply with the procedures set forth by this administrative regulation may also result in one (1) of the following:~~

~~(a) Striking of untimely or inappropriate documents or evidence;~~

~~or~~

~~(b) A fine of not more than \$500.]~~

Section 25. ~~[26.]~~ Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the Uninsured Employers' Fund of compensation shall be made upon the determination by an administrative law judge that the responsible employer failed to secure payment of compensation as provided by KRS 342.340; and

(a) Thirty (30) days have expired since the finality of an award or issuance of an interlocutory relief order and a party in interest certifies the responsible employer has failed to initiate payments in accordance with that award;

(b) Upon showing that the responsible employer has filed a petition under any section of the Federal Bankruptcy code; or

(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

(2) The plaintiff may by motion and affidavit demonstrate compliance with this section and request an administrative law judge to order payment from the Uninsured Employers' Fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for the payment, who has failed to secure payment of compensation as provided by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the Special Fund.

(4) The form, Motion for Payment from Uninsured Employers' Fund, provided by the department may be used by the employee.

Section 26. ~~[27.]~~ Use of American Medical Association Guidelines in Coal Workers' Pneumoconiosis Cases. (1) Predicted normal values for FVC and FEV1 shall be determined in accordance with the latest edition of the American Medical Association Guideline. Age shall be determined as of the date of the evaluation. Height shall be measured while the plaintiff stands in his stocking feet and shall be rounded to the nearest centimeter. If the plaintiff's height is an odd number of centimeters, the next highest even height in centimeters shall be used.

(2) Formulas established by the guidelines for predicted normal FVC and FEV1 shall be applied and predicted values computed.

Section 27. ~~[28.]~~ Request for Participation by the Kentucky Coal Workers' Pneumoconiosis Fund. (1) Following a final award or order approving settlement of a claim for coal workers' pneumoconiosis benefits pursuant to KRS 342.732, the employer shall tender a written request for participation to the Kentucky coal workers' pneumoconiosis fund within thirty (30) days. This request shall be in writing and shall be accompanied by the following documents:

- (a) Plaintiff's application for resolution of claim;
- (b) Defendant's notice of resistance, notice of claim denial or acceptance, and any special answer;
- (c) All medical evidence upon which the award or settlement was based;

(d) Final opinion, or order of an administrative law judge determining liability for benefits, or order approving settlement agreement. If an administrative law judge's award was appealed, appellate opinions shall be attached;

(e) If the request for participation includes retraining incentive benefits under KRS 342.732, the employer shall certify that the plaintiff meets the relevant statutory criteria; and

(f) If the request for participation is for settlement of a claim, the employer shall certify that the settlement agreement represents liability for benefits in the claim, and does not include any sums for other claims which the plaintiff may have against the employer.

(2) Within thirty (30) days following receipt of a completed request for participation, the director shall notify the employer and all other parties of acceptance or denial of the request.

(3) A denial shall be made upon a finding by the director that the employer failed to defend the claim or entered into a settlement agreement not supported by the medical evidence or which was procured by fraud or mistake. Denial shall be in writing and shall state the specific reasons for the director's action.

(4) Denial of a request for participation may be appealed to an administrative law judge within thirty (30) days following receipt. The administrative law judge shall determine if the denial was arbitrary, capricious, or in excess of the statutory authority of the director, and shall not reexamine the weight assigned to evidence by an administrative law judge in an award.

(5) The employer shall promptly commence payment on all of the liability pursuant to the benefit review determination, award, or order and shall continue until the liability of the Kentucky Coal Workers' Pneumoconiosis fund is established. This duty of prompt payment shall continue during pendency of an appeal from denial of a request for participation.

(6) Upon an appeal from the denial of a request for participation, if the Kentucky Coal Workers' Pneumoconiosis fund does not prevail, it shall reimburse the employer for its proportionate share of the liability together with interest at the rate established in KRS 342.040.

Section 28. ~~[29.]~~ Forms. The Department of Workers' Claims shall not accept applications or forms in use prior to the forms required by and incorporated by reference in this administrative regulation. Outdated applications or forms submitted shall be rejected and returned to the applicant or person submitting the form. If the application or form is resubmitted on the proper form within twenty (20) days of the date it was returned, the filing shall date back to the date the application or form was first received by the commissioner. Otherwise, the date of the second receipt shall be the filing date.

Section 29. Retroactive Application. These emergency amendments made to this administrative regulation replace in their entirety, the amendments made to this administrative regulation, which came into effect on January 14, 2002. The amendments which were effective on January 14, 2002 shall be null and void. This emergency administrative regulation shall be effective from January 14, 2002, and shall remain in full force and effect from that day forward or until future amendments are promulgated by the administrative agency, the Department of Workers' Claims.

Section 30. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form 101, "Application for Resolution of Injury Claim", (revised June, 2000), Department of Workers' Claims;
- (b) Form 102, "Application for Resolution of Occupational Disease Claim", (revised June, 2000), Department of Workers' Claims;

- (c) Form 103, "Application for Resolution of Hearing Loss Claim", (January 1, 1997 Edition), Department of Workers' Claims;
  - (d) Form 104, "Plaintiff's Employment History", (January 1, 1997 Edition), Department of Workers' Claims;
  - (e) Form 105, "Plaintiff's Chronological Medical History", (January 1, 1997 Edition), Department of Workers' Claims;
  - (f) Form 106, "Medical Waiver and Consent", (January 1, 1997 Edition), Department of Workers' Claims;
  - (g) Form 107-I, "Medical Report - Injury", (revised June, 2000), Department of Workers' Claims;
  - (h) Form 107-P, "Medical Report - Psychological", (revised June, 2000), Department of Workers' Claims;
  - (i) Form 108-OD, "Medical Report - Occupational Disease", (January 1, 1997 Edition), Department of Workers' Claims;
  - (j) Form 108-CWP, "Medical Report - Coal Workers' Pneumoconiosis", (January 1, 1997 Edition), Department of Workers' Claims;
  - (k) Form 108-HL, "Medical Report - Hearing Loss", (revised June, 2000), Department of Workers' Claims;
  - (l) Form 109, "Attorney Fee Election", (March 15, 1995 Edition), Department of Workers' Claims;
  - (m) Form 110-I, "Agreement - Injury", (revised June, 2000), Department of Workers' Claims;
  - (n) Form 110-O, "Agreement - Occupational Disease", (revised June, 2000), Department of Workers' Claims;
  - (o) Form 111- Injury and Hearing Loss, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Department of Workers' Claims;
  - (p) Form 111-OD, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Department of Workers' Claims;
  - (q) Form 115, "Social Security Release Form", (January 1, 1997 Edition); and Department of Workers' Claims;
  - (r) Form AWW - 1, "Average Weekly Wage Form", (January 1, 1997 Edition), Department of Workers' Claims;
  - (s) Lump Sum Settlement Tables, (April 15, 1997 Edition), Department of Workers' Claims;
  - (t) Six (6) Percent Present Value Table (May, 1997 Edition);
  - (u) Form MIR-1, Motion for Interlocutory Relief (May 29, 1997 Edition);
  - (v) Form MIR-2, Affidavit for Payment of Medical Expenses (May 29, 1997 Edition);
  - (w) Form MIR-3, Affidavit for Payment of Temporary Total Disability (May 29, 1997 Edition);
  - (x) Form MIR-4, Affidavit Regarding Rehabilitation Services (May 29, 1997 Edition);
  - (y) Form VRT, Petition for Vocational Rehabilitation Training (May 29, 1997 Edition);
  - (z) Form MTR-1, Motion to Reopen by Employee (May 29, 1997 Edition);
  - (aa) Form MTR-2, Motion to Reopen KRS 342.732 Benefits (May 29, 1997 Edition);
  - (bb) Form MTR-3, Motion to Reopen by Defendant (May 29, 1997 Edition);
  - (cc) Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation (May 29, 1997 Edition);
  - (dd) Form UEF-P, Motion for Payment from Uninsured Employers' Fund (May 29, 1997 Edition).
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims Monday through Friday, 9 a.m. to 4 p.m. at the following locations:
- (a) Frankfort - Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;
  - (b) Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and
  - (c) Pikeville - 412 Second Street, Pikeville, Kentucky 41501.
- LARRY M. GREATHOUSE, Commissioner  
 APPROVED BY AGENCY: April 18, 2002  
 FILED WITH LRC: April 18, 2002 at 9 a.m.  
 CONTACT PERSON: Carla H. Montgomery, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 464, fax (502) 564-5934.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carla H. Montgomery

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures to administer the workers compensation injury claims.

(b) The necessity of this administrative regulation: Workers compensation injury claims could not be administered without the specific procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes allow the department to promulgate administrative regulations that are necessary to administer claims and KRS Chapter 342.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Workers compensation injury claims could not be administered without these procedures.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments will do the following:

1. Eliminate one proceeding before an administrative law judge.
2. Set the proceedings at a time when evidence is available.
3. Extend the time to object to evidence filed with the Form 101.
4. Eliminate the requirement of an initial medical report on a Form 107 and other forms.

5. Bring the regulation within the department's statutory authority deleting the sanctions of \$500 administered by administrative law judges.

6. Clarification of language that is not specific enough for workers compensation practitioners.

7. Amend the time constraints on appeals to the Workers Compensation Board.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to avoid delays in the processing of claims to prevent the unfair advantage to parties with regard to evidence, and to avoid costly travel and expense to the state.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments set forth procedures to administer claims and provide for prompt and effective administering of workers compensation claims.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the prompt and effective administering of workers compensation claims.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact all parties to a workers compensation claim. Employers, employees, insurers, the Uninsured Employer's Fund, Workers Compensation Fund, and attorneys representing these parties are impacted. Over 5,000 contested workers compensation claims are filed with the Department of Workers Claims each year.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The workers compensation community will save money and time. Claimants and attorneys will have a meaningful Benefit Review Conference. Amendments to the Workers Compensation Board will be better quality with additional time.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The department will save the state approximately \$50,000 in travel expenses for administrative law judges. Plaintiffs' attorneys could save \$500 to \$1,500 for medical reports on the Form 107 and other forms.

(b) On a continuing basis: The same decrease in costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current budget for the Department of Workers Claims.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in

fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established.

(9) TIERING: Is tiering applied? The amendments apply equally to all parties in a claim.

**STATEMENT OF EMERGENCY  
807 KAR 5:100E**

SB 257 directs the Kentucky State Board on Electric Generation and Transmission Siting to promulgate administrative regulations prescribing fees to pay expenses associated with the board's review of applications filed with it. The board has no other statutorily specified source of funds to pay the expenses of processing applications. Accordingly, the board is filing proposed administrative regulation 807 KAR 5:100 as an emergency administrative regulation to ensure that the board will have adequate funding to begin immediately processing applications. This emergency administrative regulation will allow the board immediately to begin fulfilling its statutory duties pursuant to SB 257, which has been enacted by the General Assembly on an emergency basis. An ordinary administrative regulation will not meet the board's immediate needs. SB 257 requires the board to grant or deny applications within ninety (90) days, or within 120 days if the applicant requests a hearing. The time required to promulgate an ordinary regulation often extends to six (6) months. The board is confident that applicants will begin seeking permits immediately and it will not meet the deadlines established by SB 257 unless it can begin processing applications without delay. This emergency administrative regulation is temporary in nature and the board will replace it with an ordinary administrative regulation.

PAUL PATTON, Governor

MARTIN HUELSMANN, Chairman

**PUBLIC PROTECTION AND REGULATION CABINET  
The Kentucky State Board on Electric Generation  
and Transmission Siting  
(New Emergency Administrative Regulation)**

**807 KAR 5:100E. Board application fees.**

RELATES TO: SB 257

STATUTORY AUTHORITY: SB 257

EFFECTIVE: April 25, 2002

NECESSITY, FUNCTION, and CONFORMITY: SB 257 creates the Kentucky State Board on Electric Generation and Transmission Siting and directs it to promulgate administrative regulations establishing fees to cover the expenses associated with review of applications filed pursuant to SB 257, Sections 1 to 9. SB 257, Section 4(5) further provides that, if a majority of the members of the board find that an applicant's initial fees are insufficient to pay the board's expenses for review of the application, including the board's expenses associated with legal review of the application, the board shall assess a supplemental application fee to cover the additional expenses. An application filed with the board concerns construction of a merchant electricity generating plant, SB 257, Section 3; a transfer of authority to construct and operate a merchant electricity generating plant, SB 257, Section 6(3); or construction of a non-regulated transmission line, Section 8(1). SB 257, Section 4(5) provides that an applicant's failure to pay a fee assessed pursuant to SB 257 shall be grounds for denial of the application. This administrative regulation establishes an initial application fee for each type of application filed with the board and specifies the method by which a supplemental fee may be assessed.

Section 1. Application Fee to be Filed with an Application to Construct a Merchant Electricity Generating Plant. A person seeking to obtain a certificate to construct a merchant electricity generating plant shall submit with its application to the Kentucky State Board on Electric Generation and Transmission Siting, at the offices of the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky, an initial application fee of \$1,000 per mega-



watt of electricity generating capacity, based on the manufacturer's nameplate rated capacity of the proposed construction, except that the initial application fee for each application for each plant shall be in an amount not less than \$40,000 and not more than \$200,000.

Section 2. Application Fee to be Filed with an Application to Construct a Nonregulated Transmission Line. A person seeking board approval of construction of a nonregulated transmission line shall file with its application to the board an application fee of fifty (50) dollars per kilovolt of rated capacity per mile of length, except that the initial application fee shall be in an amount not less than \$10,000 and not more than \$200,000.

Section 3. Application Fee to be Filed with an Application to Transfer a Certificate to Construct a Merchant Electricity Generating Facility: A person seeking board approval to transfer any right or obligation associated with a certificate granted by the board to construct a merchant electricity generating facility shall file with its application to the board, at the offices of the Kentucky Public Service Commission, at 211 Sower Boulevard, Frankfort Kentucky, an initial application fee of \$5,000.

Section 4. Supplemental Application Fee. No sooner than thirty (30) days after an application has been filed and no later than sixty (60) days after issuance of the board's final decision on an application or, if judicial review has been sought, no later than sixty (60) days after all appeals of the board's decision have been exhausted, the board may assess a supplemental application fee to cover any expense for which the initial application fee was insufficient. The supplemental fee shall be assessed by order containing an accounting of each expense for which the supplemental fee is assessed.

Section 5. Refund. No later than sixty (60) days after issuance of the board's final decision on an application or, if judicial review has been sought, no later than sixty (60) days after all appeals of the board's decision have been exhausted, the board shall refund to the applicant any amount paid which exceeds the amount expended by the board.

MARTIN J. HUELSMANN, Chairman  
RONALD B. MCCLOUD, Secretary  
APPROVED BY AGENCY: April 25, 2002  
FILED WITH LRC: April 25, 2002 at 1 p.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Angela Curry, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed regulation specifies initial fees to be paid by an applicant before the Kentucky State Board on Electric Generation and Transmission Siting to pay an application fee. The proposed administrative regulation also allows the board to assess supplemental fees if the initial fees are insufficient to pay the board's expenses associated with an application.

(b) The necessity of this administrative regulation: SB 257 Section 4(5) directs the board to promulgate administrative regulations prescribing fees to pay expenses associated with its review of applications. This section further directs the board to assess supplemental application fees if an applicant's initial fees are insufficient to pay the board's expenses. The proposed administrative regulation is necessary to implement the requirements of SB 257.

(c) How this administrative regulation conforms to the content of the authorizing statutes: SB 257 directs the board to promulgate administrative regulations prescribing fees to pay expenses associated with its review of applications. SB 257 further directs the board to assess a supplemental fee if an applicant's initial fees are insufficient to pay the board's expenses. The proposed administrative regulation fully implements these requirements and is necessary to fund board proceedings on applications authorized by SB 257, Sections 1 to 9.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative

regulation will assist in the effective implementation of the statutes by ensuring that the board has the financial resources necessary to properly investigate and review applications for construction and transfer approvals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes: The proposed administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The proposed administrative regulation will affect individuals, businesses, organizations, or other entities that seek to construct merchant electric generating facilities. It is unknown at this time how many persons, businesses, or organizations will be affected by this administrative regulation. Potentially every local government in this Commonwealth could be affected by this administrative regulation, in that power plants or nonregulated transmission lines could be built anywhere in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The persons and entities that must comply with this regulation will incur additional application costs. The affected governmental entities will be able to participate in a fully-funded process to determine appropriate siting for power plants and transmission lines.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding increase is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes

(9) TIERING: Is tiering applied? Yes, tiering is used in this proposed regulation. The regulation sets higher fees for those facilities that are larger and have higher generation capacities. Larger facilities create a greater potential for disrupting the environment in which they are proposed to be placed. In addition, larger facilities tend to generate more public involvement in the process. The board will need financial resources that correlate to the size of the generating facility in order to accurately assess its potential impact on the neighboring community.

#### STATEMENT OF EMERGENCY 807 KAR 5:110E

SB 257 directs the Kentucky State Board on Electric Generation and Transmission Siting to promulgate administrative regulations to implement the act and to establish procedures for board proceedings. SB 257 contains an emergency clause and will be effective on the date of the Governor's signature. Accordingly, the board hereby files proposed administrative regulation 807 KAR 5:110 as an emergency administrative regulation to ensure that the board hearings are conducted in a prompt and orderly manner. This emergency administrative regulation will allow the board immediately to begin fulfilling its statutory duties pursuant to SB 257. An ordinary administrative regulation will not meet the board's immediate needs. SB 257 requires the board to grant or deny applications within ninety (90) days, or within 120 days if a hearing is requested. The time required to promulgate an ordinary administrative regulation often

extends to six (6) months. Applicants may begin filing applications immediately and the board will not meet the deadlines established by SB 257 unless it can begin processing these applications without delay. This emergency administrative regulation is temporary in nature and the board will replace it with an ordinary administrative regulation.

PAUL PATTON, Governor  
MARTIN HUELSMANN, Chairman

**PUBLIC PROTECTION AND REGULATION CABINET**  
**The Kentucky State Board on Electric Generation**  
**and Transmission Siting**  
**(New Emergency Administrative Regulation)**

**807 KAR 5:110E. Board proceedings.**

RELATES TO: SB 257  
STATUTORY AUTHORITY: SB 257  
EFFECTIVE: April 25, 2002

NECESSITY, FUNCTION, and CONFORMITY: SB 257 creates the Kentucky State Board on Electric Generation and Transmission Siting. SB 257, Section 2(3), states that the board shall promulgate administrative regulations to implement Sections 1 to 9 of SB 257. SB 257, Section 7(2), provides that the board shall promulgate administrative regulations governing a board hearing. SB 257, Section 4(2)(c), requires an applicant seeking to obtain a construction certificate from the board to give proper notice of his intention to the public. This administrative regulation establishes procedures that govern board proceedings.

Section 1. General Matters Pertaining to All Formal Proceedings. (1) Address of the board. Any communication should be addressed to "Kentucky State Siting Board on Electric Generation and Transmission Siting, 211 Sower Boulevard, PO Box 615, Frankfort, Kentucky 406012".

(2) Form of papers filed. A pleading in a formal proceeding shall be printed or typewritten on one (1) side of the paper only, and typewriting shall be double spaced.

(3) Signing of pleadings. Every pleading of a party represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address.

(4) Service of process. When any party has appeared by attorney, service upon the attorney shall be deemed proper service upon the party.

Section 2. Notice of Intent to File Application. (1) At least thirty (30) days prior to filing an application to construct a merchant electricity generating plant or nonregulated transmission line, an applicant shall file at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, a Notice of Intent to File Application.

(2) A Notice of Intent to File Application shall include:

(a) The name, address, and telephone number of the person who intends to file the application;

(b) A brief description of the proposed construction that will be the subject of the application;

(c) A description of the location of the proposed construction, including:

1. The name of the city and county in which the construction will be proposed;

2. The street address and latitude and longitude of the site of the construction to be proposed; and

3. Whether the proposed construction will be within the boundaries of a city;

(d) The address of the planning and zoning commission, if any, with jurisdiction over the site of the construction to be proposed;

(e) If applicable, a description of the setback requirements of the planning and zoning commission with jurisdiction over the site of the construction to be proposed; and

(f) If the planning commission's setback requirements are less stringent than those prescribed by statute, or if the planning commission with jurisdiction, if any, has not established setbacks, a statement as to whether a deviation from the statutory setback re-

quirements will be requested in the application.

Section 3. Board Applications. (1) An applicant shall file an original and ten (10) paper copies, and one (1) copy in electronic format, of its application at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601.

(2) A paper copy of an application shall:

(a) Be in a bound volume with each document tabbed; and

(b) Contain a table of contents that lists, for each document enclosed:

1. The number of the tab behind which the document is located;

2. The statutory provision pursuant to which the document is submitted; and

3. The name of the person who will be responsible for responding to questions concerning information contained in the document.

(3) Administrative staff for the board shall determine whether the application is administratively complete and shall inform the applicant of its determination by letter.

Section 4. Intervention and Parties. (1) A person who wishes to become a party to the proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request that he be granted leave to intervene.

(2) A motion to intervene shall be granted if the movant has shown:

(a) That he has a special interest in the proceeding; or

(b) That his participation in the proceeding will assist the board in reaching its decision.

Section 5. Evidentiary Hearings. (1) Upon its own motion or on written motion of a party to a case before it, filed no later than thirty (30) days after an application has been filed, the board may schedule an evidentiary hearing at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky.

(2) A party wishing to present an expert witness at an evidentiary hearing shall, no later than five (5) days prior to the hearing date, file with the board, with a copy to each party of record, the report prepared by the expert and a full description of the credentials qualifying the witness to testify as an expert on the subject matter for which he will testify.

(3) No later than five (5) days prior to an evidentiary hearing, a party to the case shall file the name of each witness he expects to present at the hearing, together with a brief statement of each matter regarding which the witness will testify.

(4) An evidentiary hearing shall be conducted before the board or before a person designated by the board to conduct a specific hearing.

(5) Testimony before the board shall be given under oath or affirmation.

(6) If an objection is made to the admission or exclusion of evidence before the board, the objecting party shall state briefly the basis for his objection.

(7) The board shall cause to be made a record of an evidentiary hearing.

Section 6. Filing of Briefs. A party of record may file a brief no later than seven (7) days after the conclusion of the evidentiary hearing.

Section 7. Local Public Hearings. (1) A local public hearing may be conducted before the board or before a person designated by the board to conduct a specific hearing.

(2) A request for a local public hearing shall be made in writing and shall be filed no later than thirty (30) days after a complete application is filed.

(3) The board shall, at least twenty (20) days before the hearing date, give notice of the hearing to:

(a) All parties to the proceeding;

(b) The judge/executive of the county in which the construction of the facility is to be located;

(c) The mayor of the city in which the facility is to be located, if applicable; and

(d) The planning commission with jurisdiction over the area in which the facility is to be located, if applicable.



(4) The board or its designated hearing officer shall accept unsworn, oral comment from any member of the public who provides his name and address on a sign-in sheet to be provided at the hearing.

(5) Within seven (7) calendar days after the local public hearing, administrative staff for the board shall file in the official record of the case, with a copy to each party of record, a summary of public comments made at the local hearing that:

- (a) Identifies each person who made oral comments; and
- (b) Summarizes the comments received.

Section 8. Notice Requirements. (1) Notice of an evidentiary hearing. At least five (5) days before the hearing date, the applicant shall submit to the board proof that it has given notice of the hearing to each party and to the general public by publication in a newspaper of general circulation in the county or municipality in which the plant or transmission line is proposed to be located.

(2) Notice of a local public hearing. At least five (5) days before the hearing date, the applicant shall submit to the board proof that it has given the general public notice of the hearing in a newspaper of general circulation in the county or municipality in which the plant or transmission lines is proposed to be located.

(3) An applicant giving public notice pursuant to SB 257, Section 4(2)(c), shall include in the notice the following information:

(a) A person who wishes to become a party to a proceeding before the board may, by written motion filed no later than thirty (30) days after the application has been submitted, request that he be granted leave to intervene; and that

(b) A party may, upon written motion filed no later than thirty (30) days after an application has been filed, request the board to schedule an evidentiary hearing at the offices of the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky; and that

(c) A request for a local public hearing shall be made by no less than three (3) interested persons that reside in a county or municipal corporation in which the plant or transmission line is to be located and that the request shall be made in writing and shall be filed no later than thirty (30) days after a complete application is filed.

MARTIN J. HUELSMANN, Chairman  
RONALD B. MCCLOUD, Secretary  
APPROVED BY AGENCY: April 25, 2002  
FILED WITH LRC: April 25, 2002 at 1 p.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Angela Curry, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed regulation establishes procedural rules for the Kentucky State Board on Electric Generation and Transmission Siting.

(b) The necessity of this administrative regulation: SB 257 requires the board to establish, by regulation, procedures to implement the provisions of Section 1 through 9 of the Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed administrative regulation conforms to the content of the authorizing statutes by establishing procedural rules.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective implementation of the statutes by ensuring that the board has procedures in place to process applications submitted to it.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes: The proposed administrative regulation is not an amendment to an existing administrative regulation.

(3) List the type and number of individuals, businesses, organi-

zations, or state and local governments affected by this administrative regulation: The proposed administrative regulation will affect individuals, businesses, organizations, or other entities that seek to construct merchant electric generating facilities. It is unknown at this time how many persons, businesses, or organizations will be affected by this administrative regulation. Potentially every local government in this Commonwealth could be affected by this administrative regulation, in that power plants or nonregulated transmission lines could be built anywhere in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The persons and entities that must comply with this regulation, as well as the affected governmental entities, will be able to participate in an orderly process to determine appropriate siting for power plants and transmission lines.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Implementation of the proposed administrative regulation will not involve costs in addition to those already implicated by statutory requirements.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees to be collected from applicants before the board.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding increase, is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? No, tiering is not used in this proposed administrative regulation. Persons proposing to construct merchant power plants or nonregulated transmission lines have substantial financial resources, and there appears to be no reason why some should be subjected to different procedural requirements than others.

#### STATEMENT OF EMERGENCY 902 KAR 20:380E

This emergency administrative regulation establishes the minimum requirements to operate a residential hospice facility. This administrative regulation must be enacted on an emergency basis to ensure citizens of the Commonwealth, who are in need of care from a residential hospice facility, are able to receive care. The emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent to promulgate an administrative regulation will be filed with the Regulations Compiler at the same time as the emergency administrative regulation is filed.

PAUL E. PATTON, Governor  
MARCIA R. MORGAN, Secretary

#### CABINET FOR HEALTH SERVICES Office of Inspector General (New Emergency Administrative Regulation)

902 KAR 20:380E. Operation and services; residential hospice facilities.

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.042, 216B.045 to 216B.055, 216B.075, 216B.105 to 216B.131, 216B.990, 311.560(4), 314.011(8), 314.041, 314.051

STATUTORY AUTHORITY: KRS 216B.042(1)

EFFECTIVE: May 7, 2002

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health Services to regulate health facilities and health services. This administrative regulation establishes licensure requirements for residential hospice facility operation and services.

Section 1. Definitions. (1) "Administrator" means a person who

has:

(a) Served as an administrator for a hospice program or a residential hospice facility licensed by the state; or

(b) A bachelor of arts or bachelor of science degree in a health care, human services, or administrative curriculum; or

(c) Equivalent administrative work experience in a health care facility.

(2) "Bereavement" means the period of time during which a person experiences, responds emotionally and adjusts to the loss by death of another person.

(3) "Facility" means a residential hospice facility.

(4) "Palliative care" means care directed at reducing or abating pain and other symptoms of the disease process in order to achieve relief of distress.

(5) "Qualified dietitian" means a person licensed pursuant to KRS 310.021.

(6) "Residential hospice facility" means a facility licensed pursuant to this administrative regulation and providing residential care for terminally ill patients that includes skilled nursing care for the management of pain and acute and chronic symptoms.

(7) "Respite care patient" means a patient requiring assistance with daily living activities and medical management of pain and symptoms who is admitted to the facility in order to:

(a) Provide relief to a patient's normal caregiver; or

(b) Provide care when the patient does not have a caregiver to assist him in his home.

(8) "Sanitary sewer" means a sewer which carries sewage and excludes storm, surface, and ground water.

(9) "Terminally ill" means a person who is experiencing a fatal condition for which therapeutic strategies directed toward cure and control are no longer effective.

(10) "Volunteer" means a person who contributes time and talent to the facility without economic remuneration.

Section 2. Administration and Organization. (1) The licensee shall be legally responsible for the operation of the residential hospice facility and for compliance with federal, state, and local law pertaining to the operation of the facility.

(2) The licensee shall have permanent facilities for the care of patients and storage of patient records.

(3) The licensee shall establish and enforce policies for the administration and operation of the facility. The policies shall include:

(a) Admission of patients;

(b) Development of a plan of care by the interdisciplinary team;

(c) Quality care audits of direct services;

(d) Personnel policy and procedure to include:

1. A description of each personnel position;

2. A description of the lines of authority; and

3. Orientation and training program information.

(e) Use of volunteers, volunteer selection criteria, training, and roles in the facility;

(f) A written disaster preparedness plan which includes:

1. Procedures to be followed in the event of an internal or external disaster; and

2. A requirement that the plan is periodically rehearsed with staff;

(g) Linkage agreements with providers of services and supplies;

(h) Procedures for ensuring the safety of confused and wandering patients; and

(i) Procedures for patient restraint to include:

1. A policy for obtaining an order from the patient's physician;

2. A policy for the assessment and reassessment of the need for patient restraint, requiring the use of the least restrictive method;

3. A policy detailing the methods for applying patient restraints; and

4. A policy requiring monitoring the use of patient restraints.

(4) Medical records.

(a) A medical record shall be maintained for each individual who is admitted to the facility. The medical record shall include:

1. Written admission order from a physician;

2. Medical history;

3. Social and psychological information on patient and family;

4. Orders from physicians and other practitioners acting within their scope of practice;

5. The approved care plan; and

6. Documentation of medical services provided.

(b) Retention of medical records.

1. After the death or discharge of an adult patient, the completed medical record shall be placed in an inactive file and retained for five (5) years;

2. After the death or discharge of a minor patient, the record shall be placed in an inactive file and retained for five (5) years from the date of the event, or three (3) years after the patient reaches the age of majority, whichever is longer.

(5) Personnel.

(a) The facility shall have:

1. A medical director who is a licensed physician, available on at least a consultative basis, and who shall:

a. Direct medical aspects of the facility's services; and

b. Participate in the development of medical policy and procedure;

2. An administrator who shall:

a. Direct the daily operation of the facility; and

b. Implement policies and procedures for activities and services, whether provided by facility personnel or by contract; and

3. A patient-care coordinator who is a registered nurse who:

a. Shall have education or experience in skilled nursing services for the terminally ill; and

b. May serve as the facility administrator.

(b) The facility shall employ or have access to a sufficient number of qualified personnel as may be necessary to provide the services required by this administrative regulation and indicated by the need of the facility's patients.

(c) Current employee records shall be maintained and shall include a resume of an employee's training and experience, evidence of current licensure or registration if required by law, health records and evaluation of performance, along with an employee's name, address, and Social Security number.

(d) Supportive personnel, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(e) An employee or volunteer shall have a test for tuberculosis prior to or within the first week of work and annually thereafter. An employee or volunteer with evidence of an infectious disease shall not be present in the facility until the infectious disease can no longer be transmitted.

(f) The facility shall conduct an orientation for new employees and volunteers.

(g) An employee of the facility who has direct patient care responsibilities shall have current cardiopulmonary resuscitation (CPR) certification from either the American Heart Association or the American Red Cross.

(6) Infection control.

(a) The facility shall implement an infection control policy which is consistent with the Centers for Disease Control and Prevention (CDC) guidelines, to include policies which address the prevention of disease transmission to and from patients, visitors, and employees including:

1. Blood and body fluid precautions; and

2. Precautions for infections which can be transmitted by the airborne route.

(b) If the facility has a patient with an infectious disease transmitted by airborne pathogens and who requires isolation pursuant to Centers for Disease Control and Prevention (CDC) guidelines:

1. The facility shall have at least one (1) isolation room which shall:

a. Be a private room that shall:

(i) Have a separate toilet room with bath or shower and lavatory for the exclusive use of the patient allowing for direct entry from the patient bed area;

(ii) Have a ceiling that is readily washable without crevices that can retain dirt particles; and

(iii) Have an anteroom outside and immediately adjacent to the patient room with facilities for maintaining aseptic conditions;

b. Have an adequate ventilation system to reduce the risk of the transmission of the airborne pathogen that meets the following requirements:

(i) Produces negative air pressure;

- (ii) Completes a minimum of twelve (12) air changes per hour;
- (iii) Completes a minimum of two (2) outside air changes per hour;

- (iv) Exhausts air directly outside of the building;
- (v) Does not allow for air to be recirculated;
- (vi) Has a minimum filter efficiency of ninety (90) percent; and
- c. Be approved for use by the Office of Inspector General prior to being occupied by a patient requiring isolation.

2. The patient shall be isolated in the least restrictive method possible in order to protect others from the organism while protecting the privacy and dignity of the patient;

(c) The facility shall develop and follow an isolation procedure which shall include:

1. Definition of nosocomial infections and communicable diseases;
2. Measures for assessing and identifying patients and health care workers at risk for infections and communicable diseases;
3. Measures for prevention of infections, especially those associated with immunosuppressed patients and other factors which compromise a patient's resistance to infection;
4. Measures for prevention of communicable disease outbreaks;
5. Provision of a safe environment consistent with the current CDC recommendations for the identified infection;
6. Isolation procedures and requirements for infected or immunosuppressed patients which shall require the least restrictive method possible in order to protect others from the pathogen while protecting the privacy and dignity of the patient;
7. Use and techniques for CDC precautions;
8. Methods for monitoring and evaluation practices of asepsis;
9. Provision for safe handling of contaminated laundry including a requirement for:

- a. Clearly marked bags; and
- b. Separate handling procedures;
10. Provision for the safe handling and segregation of dishes and eating utensils used by isolated patients;
11. Use of gowns, gloves, or masks by staff, visitors, and anyone else in contact with the patient;
12. Techniques for handwashing, respiratory protection, asepsis, sterile disinfection, needle disposal, solid waste disposal, as well as any other means for limiting the spread of infection;
13. Orientation of all new facility personnel to infections, to communicable disease and to the infection control program; and
14. Tuberculin skin tests for employees and volunteers after a suspected exposure to the disease.

Section 3. Patient Care Requirements. (1) A patient may be admitted to a facility only upon an order from a physician.

(2) The patient's attending physician or the medical director shall be responsible for the direct medical care of the patient's illness.

(3) The facility shall provide the following services directly:

- (a) Coordination of the medical aspects of the facility;
- (b) Assessment of physical, psychological, spiritual, social, and economic needs of the patient;

(c) Development and coordination of a care plan, based on the assessment required in paragraph (b) of this subsection, which includes the delineation of responsibilities of each interdisciplinary team member and provides for regularly scheduled interdisciplinary team meetings for planning, evaluation, and individual case management. This requirement may be satisfied by the continuation of the plan of care established for a patient by a licensed hospice program provided that the plan of care is reviewed and revised when the patient is admitted to the facility.

1. Care plan development shall be the responsibility of an interdisciplinary team that shall include:

- a. The patient;
- b. The patient's family, if the patient wants them to participate;
- c. The medical director;
- d. A nurse;
- e. A social worker;
- f. The patient's attending physician; and
- g. A representative of the clergy, if the patient so chooses.

2. The care plan shall be reviewed by the patient's attending physician or the medical director, in consultation with facility personnel:

a. At such intervals as the change in the patient's condition requires; or

b. At least once every two (2) weeks.

3. The care plan shall be reviewed by the interdisciplinary team to ensure that a patient receives palliative care.

4. Verbal authorization to change the medical orders shall be reviewed and signed by the patient's attending physician or the medical director within seven (7) days after the order is issued.

5. Verbal authorization to change nonmedical orders of the care plan shall be reviewed and signed by the medical director within seven (7) days after the order was issued.

(d) Patient counseling and bereavement counseling of the family; and

(e) Education and training services for staff, volunteers, and family members.

#### Section 4. Services. (1) Nursing services.

(a) The facility shall provide twenty-four (24) hour nursing services that shall:

1. Be sufficient to meet total nursing needs;
2. Be provided in accordance with the patient's plan of care;
3. Ensure a patient receives prescribed:
  - a. Treatments;
  - b. Medications; and
  - c. Diets; and
4. Ensure a patient shall be:
  - a. Comfortable;
  - b. Clean;
  - c. Well groomed; and
  - d. Protected from accident, injury and infection.

(b) Each shift must include a registered nurse to provide patient care.

(2) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing and administering drugs and biologicals, which have been developed with the advice of a staff pharmacist, or a consultant pharmacist.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provisions for promptly and conveniently obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The staff or consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The staff or consultant pharmacist shall dispense drugs from the drug supply, properly label, and make the drugs available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) Medication services.

1. Except in a circumstance that requires a verbal order, a medication shall not be given without a written order signed by a physician, or other ordering personnel acting within their statutory scope of practice.

a. A verbal order for a medication shall be given only to a licensed practical or registered nurse or a pharmacist and shall be signed by a member of the medical staff or other ordering practitioner as soon as possible after the order is given.

b. A verbal order for a medication, at the time received, shall be:

- (i) Immediately transcribed by the person receiving the order;
- (ii) Repeated back to the person requesting the order to ensure accuracy; and

(iii) Annotated on the patient's medical record, by the person receiving the order, as repeated and verified.

2. Administration of medications. A medication shall be administered by licensed medical or nursing personnel in accordance with their scope of practice or by personnel who have completed a state approved training program from a state approved training provider. An intramuscular injection shall be administered by a licensed nurse

or a physician. An intravenously administered medication shall be administered by a licensed physician, a registered nurse or a properly trained licensed practical nurse. Each dose administered shall be recorded in the medical record.

a. A medication prescribed for one (1) patient shall not be administered to any other patient.

b. Self-administration of a medication by a patient shall not be permitted except on special order of the patient's physician.

c. A medication error shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

d. A drug reaction shall be immediately reported to the patient's physician, the dispensing pharmacist and an entry thereof made in the patient's medical record.

e. An up-to-date medication reference text and source of information shall be provided for use by the nursing staff, for example the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references.

### 3. Labeling and storing medications.

a. A medication shall be clearly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use, except where a modified unit dose system, conforming to federal and state laws, is used. The medication of each patient shall be kept and stored in the original container and transferring between containers shall be prohibited. A medicine stored by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. A medication requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. A drug for external use shall be stored separately from those administered by mouth, rectally and injected. Provisions shall also be made for the locked separate storage of medication prescribed for a deceased or discharged patient until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. A medication container having a soiled, damaged, incomplete, illegible, or makeshift label shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. A container having no label shall be destroyed in accordance with state and federal laws.

c. A medication cabinet shall be well lighted and of sufficient size to permit storage without crowding.

d. Medication no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. A medication with an expired date shall be removed from usage and properly disposed of after such date.

f. Controlled substances. A controlled substance shall be kept under double lock, for example, in a locked box in a locked cabinet. There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed Schedule II controlled substances count daily, and Schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with federal and state laws.

### (3) Dietary services.

(a) The facility shall provide dietary services directly or through a written contractual agreement.

(b) If the dietary services are contracted, the facility shall ensure that the contractor complies with the requirements of this paragraph.

(c) If dietary services are provided directly, the facility shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who, by education or specialized training and experience, is knowledgeable in food service management.

2. The dietary service shall have at least one (1) qualified dietitian working full time, part time, or on a consultative basis, to supervise

the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have current written policies and procedures for food storage, handling, and preparation. Written dietary policy and procedure shall be available to dietary personnel.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(d) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(e) Each meal shall correspond with the posted menu. When a change is necessary, substitution shall provide equal nutritive value and the change shall be recorded on the menu. Each menu shall be kept on file for thirty (30) days.

(f) Every diet, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member or other ordering personnel acting within their statutory scope of practice. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(g) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs; for example, it shall be cut, chopped, or ground to meet individual patient needs.

(h) If a patient refuses foods served, nutritious substitutions shall be offered.

(i) Unless contraindicated in a patient's plan of care, at least three (3) meals or their equivalent shall be served daily.

(j) There shall not be more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member.

(k) Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(l) If dietary services are provided directly, there shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(m) If the dietary services are contracted, the facility shall develop a contingency plan to ensure the provision of dietary services in the case of an emergency.

(n) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(o) The facility shall comply with all applicable provisions of KRS 219.011 to 219.081 and 902 KAR 45:005, the Retail Food Code.

### Section 5. Facility Specifications. (1) Fire protection and security.

(a) The facility shall meet the provisions of the most current edition of the Life Safety Code of the National Fire Protection Association that are applicable to hospices.

(b) The building shall be inspected and approved by the local certified building department with jurisdiction of the area.

(c) The facility shall not house blind, nonambulatory, or physically handicapped patients above or below ground level unless the building is fully sprinklered.

(d) The facility shall have portable fire extinguishers readily available on all floors and in the kitchen and food preparation area.

(e) The facility shall have its electrical system inspected by a certified electrical inspector and certified to be in safe working conditions annually.

(f) The facility shall have an emergency power source that provides electrical service when normal service is interrupted for communication systems, alarm systems, egress lighting and patient care areas.

(g) The facility shall install, in accordance with the manufacturer's specifications, single station smoke detectors in all living areas, resident bedrooms, corridors, stairwells, storage areas, and the basement and shall maintain them in functioning order.

(h) The facility shall have an adequate water supply and an

adequate system for sewage disposal.

(i) The facility shall maintain sturdy and securely fastened handrails measuring thirty-six (36) inches or more above ground or floor level on all interior and exterior stairways.

(j) The facility shall maintain floors in good repair.

(k) The facility shall maintain in good repair and free of obstacles all corridors, entrances, exits, and outside pathways.

(l) The facility shall keep all sidewalks, fire escape routes, and entrances free of snow, ice, and debris.

(m) The facility shall keep the grounds in an orderly, litter-free manner, clear of refuse and discarded objects and mowed.

(n) The facility shall provide general outdoor lighting to adequately illuminate the walkways and drive.

(o) The facility shall establish a procedure to ensure the exterior doors are locked between the hours of 9 p.m. and 7 a.m.

(2) Patient rooms.

(a) Each patient room shall contain:

1. A bathroom equipped with:

a. A toilet;

b. A sink suitable for handwashing; and

c. Either a shower or bathtub;

2. Be above grade level;

3. Contain a suitable bed for each patient and other appropriate furniture;

4. Have closet space that provides security and space for private belongings;

5. Contain no more than two (2) beds in a room occupied by a respite care patient and no more than one (1) bed in a room occupied other patients;

6. Measure at least 100 square feet for a single patient room and at least eighty (80) square feet per patient in a two (2) patient room; and

7. Be equipped with a suitable device for the patient to call direct care staff on duty.

(b) The facility shall allow a patient to place items for the personalization and comfort of his room.

(3) Visitation.

1. The facility shall provide physical space for a patient to visit in private.

2. The facility shall provide accommodation for family members to remain with a patient throughout the night.

3. The facility shall provide accommodations for family privacy after the death of a patient; and

4. The facility shall allow a patient to receive visitors, including small children, at any hour.

(4) Linens and housekeeping.

(a) The facility shall have available at all times a quantity of linen essentials for proper care and comfort of patients.

(b) Linens shall be handled, stored, processed, and transported in such a manner as to prevent the spread of infection.

(c) Soiled linens and clothing shall be collected and encased in suitable bags or containers in well ventilated areas, separate from clean linens and not permitted to accumulate in the facility.

(d) The facility shall establish and implement housekeeping and maintenance policies and procedures that assure the environment is:

1. Safe;

2. Clean; and

3. Sanitary.

(e) Cleaning procedures shall provide for the prompt, thorough cleaning of:

1. Commodes;

2. Urinals;

3. Bedpans;

4. Bathrooms; and

5. Other obvious sources of odors.

(f) Cleaning shall be performed in a manner to minimize the spread of pathogens.

(5) Waste disposal.

(a) Sharp waste.

1. Sharp waste, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other waste and placed in puncture resistant containers immediately after use.

2. A needle or other contaminated sharp instrument shall not be purposely bent, broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Occupational Safety and Health Administration guidelines established in 29 CFR 1910.1030(d)(2)(vii).

3. The containers of sharp waste shall be incinerated on or off site, or be rendered nonhazardous.

(b) Disposable waste.

1. Disposable waste shall be placed in suitable bags or closed containers to prevent leakage or spillage, and shall be handled, stored, and disposed of minimizing direct exposure of personnel to waste materials.

2. The facility shall establish specific written policies regarding handling and disposal of waste.

3. The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

4. Wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment law, including 40 CFR 403, 401 KAR 5:557, and relevant local ordinances.

Section 6. Licensing Procedures. (1) Initial licensure.

(a) A residential hospice facility applying for a license to operate shall return a completed OIG 155 to the Office of Inspector General along with the initial licensing fee of:

1. Nine (9) dollars per bed; or

2. A minimum of \$155.

(b) The Office of the Inspector General shall conduct an initial licensing inspection pursuant to 902 KAR 20:008.

(2) Relicensure. Prior to the date that the license to operate expires, a private duty nursing agency shall send a completed OIG 155 to the Office of the Inspector General along with the annual relicensure fee of:

(a) Nine (9) dollars per bed; or

(b) A minimum of \$155.

Section 7. Incorporation by Reference. (1) "Form OIG 155, Application for a License to Residential Hospice Facility, April 2002 edition" is incorporated by reference.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Office of the Inspector General 275 East Main Street, Fifth Floor East, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

PAMELA J. MURPHY, Inspector General

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: May 2, 2002

FILED WITH LRC: May 7, 2002 at 9 a.m.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Alex Reese

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum licensure requirements for the operation and services of residential hospice facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum licensure requirements for residential hospice facilities operations and services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216B.042(1) requires the Kentucky Cabinet for Health Services to regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation of, and services provided by residential hospice facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the Office of the Inspector General the authority to ensure that residential hospice facilities provide adequate needs to meet patient need and provide for patient safety.

(2) Not an amendment.

(3) List the type and number of individuals, businesses, organi-

CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
Division of Physical Health  
(Emergency Amendment)

907 KAR 1:019E. Outpatient Pharmacy Program [Pharmacy services].

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.561, 205.5631 through 205.5639, 205.6316, 205.8451, 217.015, 217.822, 42 CFR 430.10, 431.54, 440.120, 447.331, 447.332, 447.333, 447.334, 42 USC 1396a, b, c, d, r-8 [61.805 through 61.850, 205.520, 205.5631 through 205.5639, 205.6316, 205.8451, 217.015, 217.822, 311.550, 311.560, 311.011, 311.042, 315.010, 315.300, 42 CFR 440.120, 447.331, 447.332, 447.333, 447.334, 42 USC 1396a, b, c, d, r-8]

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 205.561, 205.5632(2), (4)(a), 205.5634(2), 205.5639(2), HB 103 of the 2002 GA [194A.030, 194A.050, 205.561, 205.5632(2), (4)(a), 205.5634(2), 205.5639(2)]

EFFECTIVE: April 19, 2002

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by the Cabinet for Health Services by regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program. [The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to pharmacy services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy.]

Section 1. Definitions. (1) "Brand name drug" means the registered trade name of a drug which was originally marketed under an original new drug application approved by the Food and Drug Administration.

(2) "Commissioner" means the Commissioner of the Department for Medicaid Services.

(3) "Covered drug" means a drug for which the Department for Medicaid Services provides reimbursement if medically necessary and if provided, but not otherwise excluded, in accordance with Sections 2 and 3 of this administrative regulation.

(4) "Department" means the Department for Medicaid Services or its designated agent.

(5) "Department's Internet web site" or "web site" means the Internet web site maintained by the Department for Medicaid Services and accessible at <http://chs.state.ky.us/dms>.

(6) "Dosage form" means the type of physical formulation used to deliver a drug to the intended site of action, including a tablet, an extended release tablet, a capsule, an elixir, a solution, a powder, a spray, a cream, an ointment, or any other distinct physical formulation recognized as a dosage form by the Food and Drug Administration.

(7) "Drug formulary" means the Department for Medicaid Services' list which specifies drugs and drug categories not covered by the department and covered drugs requiring prior authorization or having special prescribing or dispensing restrictions or excluded medical uses. The drug formulary may also include information about other drugs or drug categories and dispensing and prescribing information.

(8) "Drug Management Review Advisory Board" or "DMRAB" or "board" means the board established pursuant to KRS 205.5636.

(9) "Effective" or "effectiveness" means a finding that a pharmaceutical agent does or does not have a significant, clinically mean-

zations, or state and local governments affected by this administrative regulation: Currently, there are no licensed residential hospice facilities. This administrative regulation will affect any residential hospice facility applying for a license to operate.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes the process for residential hospice facilities to receive the license to operate a health facility or service required by KRS Chapter 216B.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: At this time, the Office of the Inspector General is unable to determine the exact cost of implementing this administrative regulation. The Office of the Inspector General will be in a better position to determine costs when it is known how many residential hospice facilities are going to apply for licensure.

(b) On a continuing basis: At this time, the Office of the Inspector General is unable to determine the exact cost of implementing this administrative regulation. The Office of the Inspector General will be in a better position to determine costs when it is known how many private duty nursing agencies are going to apply for licensure.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation establishes the licensure category for residential hospice facilities and also establishes the licensure fee for residential hospice facilities. The licensure fee established in this administrative regulation is required by the Office of the Inspector General so that inspections can be made to ensure residential hospice facilities are meeting minimum requirements for licensure.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does directly establish a fee for the licensure of a residential hospice facility.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY  
907 KAR 1:019E

This emergency administrative regulation is being promulgated to comply with requirements established in House Bill 103 of the 2002 Session of the General Assembly regarding new drugs and regarding the Pharmacy and Therapeutics Advisory Committee. This emergency administrative regulation differs from the emergency administrative regulation filed on the same subject matter on October 15, 2001, in that it implements requirements established in House Bill 103 of the 2002 Session of the General Assembly regarding new drugs and regarding the Pharmacy and Therapeutics Advisory Committee. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor  
MARCIA R. MORGAN, Secretary



ingful therapeutic advantage in terms of safety, usefulness, or clinical outcome over the other pharmaceutical agents based on pertinent information from a variety of sources determined by the department to be relevant and reliable.

(10) "Food and Drug Administration" means the Food and Drug Administration of the United States Department of Health and Human Services.

(11) "Generic drug" or "generic form of a brand name drug" means a drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug.

(12) "Legend drug" means a drug so defined by the Food and Drug Administration and required to bear the statement: "Caution: Federal law prohibits dispensing without prescription".

(13) "Maintenance drug dispensing fee exception" means an approval by the department for payment of a dispensing fee in accordance with 907 KAR 1:018E for a drug that has been designated as a maintenance drug in the department's drug formulary.

(14) "Manufacturer" is as defined in 42 USC 1396r-8(k)(5).

(15) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(16) "Official compendia" is defined in 42 USC 1396r-8(g)(1)(B)(i).

(17) "Over-the-counter drug" or "OTC drug" means a drug approved by the Food and Drug Administration to be sold without bearing the statement "Caution: Federal law prohibits dispensing without prescription".

(18) "Pharmacy and Therapeutics Advisory Committee" or "committee" or "P&T Committee" means the pharmacy advisory committee appointed by the Governor.

(19) "Prescriber" means a health care professional who, within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered.

(20) "Recipient" means an individual eligible for and participating in a medical assistance program in the Department for Medicaid Services.

(21) "Secretary" means the Secretary of the Cabinet for Health Services.

Section 2. Covered Benefits and Drug Formulary. (1) A drug covered through the Outpatient Pharmacy Program shall be:

(a) Medically necessary;

(b) Approved by the Food and Drug Administration; and

(c) Prescribed for an indication that has been approved by the Food and Drug Administration or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use.

(2) The department shall have a drug formulary which:

(a) Lists drugs and drug categories not covered by the department and, if applicable, excluded medical uses for covered drugs;

(b) Specifies those covered drugs requiring prior authorization or having special prescribing or dispensing restrictions;

(c) Specifies those covered drugs for which the maximum quantity limit on dispensing may be exceeded;

(d) Lists covered over-the-counter drugs;

(e) Specifies those legend drugs which are permissible restrictions under 42 USC 1396r-8(d), but for which the department makes reimbursement;

(f) Specifies covered vaccines;

(g) May include a preferred drug list of selected drugs which have a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate;

(h) May be updated monthly or more frequently by the department; and

(i) Shall be posted on the department's Internet web site.

(3) The department may implement drug treatment protocols requiring the use of medically appropriate drugs which are available without prior authorization before the use of drugs which require prior authorization. The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from this requirement based on documentation that drugs available without prior authorization:

(a) Were used and were not an effective medical treatment or lost their effectiveness;

(b) Are reasonably expected to not be an effective medical treatment;

(c) Resulted in, or are reasonably expected to result in, a clinically significant adverse reaction or drug interaction; or

(d) Are medically contraindicated.

Section 3. Exclusions and Limitations. (1) The following drugs shall be excluded from coverage:

(a) A drug:

1. For which the Food and Drug Administration has published a notice of opportunity for a hearing concerning its proposal to withdraw approval of the drug for marketing and which, after publication of the notice, is referred to as a less-than-effective drug; or

2. Which the Food and Drug Administration considers to be identical, related, or similar to the less-than-effective drug;

(b) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered in the drug formulary:

1. A drug if used for anorexia, weight loss, or weight gain;

2. A drug if used to promote fertility;

3. A drug if used for cosmetic purposes or hair growth;

4. A drug if used for the symptomatic relief of cough and colds;

5. A drug if used to promote smoking cessation;

6. Vitamin or mineral products other than prenatal vitamins and fluoride preparations;

7. An over-the-counter drug;

8. A barbiturate;

9. A benzodiazepine; or

10. A drug which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee;

(c) A drug for which the manufacturer has not entered into or complied with a rebate agreement in accordance with 42 USC 1396r-8(a), unless there has been a review and determination by the department that it is in the best interest of recipients for the department to make payment for the drug and federal financial participation is available for the drug;

(d) Except in accordance with Section 3(7) of this administrative regulation, a drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;

(e) A drug for which the department requires prior authorization if prior authorization has not been approved; and

(f) A drug that has reached the manufacturer's termination date, indicating that the drug may no longer be dispensed by a pharmacy.

(2) If authorized by the prescriber, a prescription may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.

(3) For each initial filling or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:

(a) The drug is designated in the department's drug formulary as a drug exempt from the thirty-two (32) day dispensing limit in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;

(b) A prior authorization request has been submitted on the Drug Prior Authorization Request Form (MAP-82001) and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater; or

(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is impractical for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply.

(4) Prior authorization shall be obtained from the department in accordance with Section 4(1)(a) of this administrative regulation for a maintenance drug dispensing fee exceptions when a refill of a maintenance drug occurs less than twenty-three (23) days from the last date the drug was dispensed.



(5) The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs; however, the department may exempt a compounded drug or compounded drug category from prior authorization if there has been a review and determination by the department that it is in the best interest of recipients for the department to make payment for the compounded drug or compounded drug category.

(6) An identification number shall be made available by a prescriber and shall be recorded on the pharmacy claim in accordance with the following:

(a) The medical license number of a physician for the state in which the physician practices or, for a physician who does not have a Kentucky state medical license number on file and who is enrolled in an approved graduate medical education program, the medical license number of the supervising physician;

(b) The license number, including applicable alpha characters, of a dentist, optometrist, or podiatrist for the state in which the individual practices;

(c) The registration number, including applicable alpha characters, of an advanced registered nurse practitioner registered in Kentucky or the registration number or license number, including applicable alpha characters, of an out-of-state advanced registered nurse practitioner for the state in which the individual practices; or

(d) The certification number, including applicable alpha characters, of a physician assistant for the state in which the individual practices.

(7) If it is determined by the department to be in the best interest of recipients, the department may designate a legend drug that may be provided through prior authorization to a recipient in an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.

(8) A recipient who has been restricted to a single pharmacy in accordance with 907 KAR 1:677 shall be required to obtain none-emergency pharmacy services from the pharmacy to which the recipient has been restricted.

Section 4. Prior Authorization Process. (1) To request prior authorization for a drug, the applicable Drug Prior Authorization Request Form, PPI and H2 Blocker Request Form, or the Brand Name Drug Request Form shall be completed and sent by fax or, if necessary, by mail, express delivery service, or messenger service to the department (or sent by secure electronic means if such has been approved by the department). If drug therapy needs to be started on an urgent basis to avoid jeopardizing the health of the recipient or to avoid causing substantial pain and suffering, the completed request form may be sent to the department's urgent fax number (or sent by secure electronic means if such has been approved by the department). A request shall be submitted in accordance with the following:

(a) Drug Prior Authorization Request Form. This form shall be used by the prescriber or the pharmacist to request prior authorization for a drug other than a drug classified as a proton pump inhibitor or a H2 receptor blocker or for a brand name only request when the generic form of the drug is available. This form may also be used by the pharmacist to obtain prior authorization for special dispensing requests involving:

1. Maintenance drug dispensing fee exceptions; and
2. Exceptions to the thirty-two (32) day maximum quantity limit including additional drugs needed for travel or other valid medical reasons.

(b) Brand Name Drug Request Form. Except as provided in paragraphs (c) and (d) of this subsection, this form shall be used by the prescriber to request prior authorization for a brand name only request when the generic form of the drug is available, unless the department has specifically exempted the drug from the requirement to use this form. The prescriber shall:

1. Complete a Brand Name Drug Request Form;
2. Include on the Brand Name Drug Request Form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested; and
3. Indicate on the Brand Name Drug Request Form:
  - a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and
  - b. Why the recipient's medical condition is unable to be adequately

treated with the generic forms of the drug.

(c) A Brand Name Drug Request Form shall not be required in the following circumstances:

1. To obtain the remaining refills, up to a maximum of five (5), of a prescription that was initially filled prior to December 4, 2001, if:
  - a. The prescriber certified that the brand name was medically necessary in accordance with subsection (3) of this section;
  - b. Refills were authorized by the prescriber at the time the prescription was written or ordered;
  - c. The lesser of five (5) refills or the number of refills authorized by the prescriber has not already been dispensed to the recipient; and

d. The remaining authorized refills are dispensed within six (6) months from the date the prescription was written or ordered.

2. If it has been determined by the department to be in the best interest of recipients not to require completion of a Brand Name Drug Request Form the prescriber shall be required to certify that the brand name is medically necessary in accordance with subsection (3) of this section.

(d) PPI and H2 Blocker Request Form. This form shall be used to request prior authorization for a drug classified as a proton pump inhibitor or a H2 receptor blocker. This form may also be used for a brand name only request when the generic form of the proton pump inhibitor or H2 receptor is available if the prescriber completes the applicable section of the form and:

1. Includes on the form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested;

2. Indicates whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and

3. Indicates why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(2) If a recipient presents a prescription to a pharmacist for a drug which requires prior authorization, the pharmacist:

(a) Shall, unless the form is one (1) which has to be completed by the prescriber, submit a request for prior authorization in accordance with subsection (1) of this section; or

(b) Shall notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization and:

1. If the prescriber indicates that a formulary alternative available without prior authorization is acceptable and provides a new prescription, shall dispense the formulary alternative; or

2. If the prescriber indicates that formulary alternatives available without prior authorization have been tried and failed or are clinically inappropriate or if the prescriber is unwilling to consider formulary alternatives, shall:

a. Request that the prescriber obtain prior authorization from the department; or

b. Unless the form is one (1) which has to be completed by the prescriber submit a prior authorization request in accordance with subsection (1) of this section; or

(c) Except as restricted by subparagraphs 3 and 4 of this paragraph, may provide the recipient with an emergency supply of the prescribed drug in an emergency situation in accordance with all of the following:

1. The emergency situation shall:

- a. Occur outside normal business hours of the department's drug prior authorization office; and
- b. Exist if, based on the clinical judgement of the dispensing pharmacist, it would reasonably be expected that, by a delay in providing the drug to the recipient, the health of the recipient would be placed in serious jeopardy or the recipient would experience substantial pain and suffering;

2. At the time of the dispensing of the emergency supply, the pharmacist shall in accordance with Section 4(1) of this administrative regulation:

a. Submit a prior authorization request to the department's urgent fax number; or

b. If applicable, shall notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department;

3. An emergency supply shall not be provided for an over-the-

counter (OTC) drug;

4. An emergency supply shall not be provided for a drug excluded from coverage in accordance with paragraphs (a), (b) and (c) of section 3(1) of this administrative regulation; and

5. The quantity of the emergency supply shall be:

a. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or

b. The amount prescribed if it is not feasible for the pharmacist to dispense just a seventy-two (72) hour supply because the drug is packaged in such a way that it is not intended to be further divided at the time of dispensing but rather dispensed as originally packaged.

(3) In addition to the requirements of subsection (1) of this section, the prescriber shall be required to certify a brand name only request by including for each brand name drug requested the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:

(a) The prescription;

(b) The nursing facility order sheet; or

(c) A separate sheet of paper which includes the name of the recipient and the brand name drug requested and is attached to the original prescription or nursing facility order sheet.

(4) The department's notification of a decision on a request for prior authorization shall be made in accordance with the following:

(a) If the department approves a prior authorization request, notification of the approval shall be provided by telephone or fax (or by secure electronic means if such has been approved by the department) to the party requesting the prior authorization and, if known, to the pharmacist.

(b) If the department denies a prior authorization request:

1. The department shall provide a denial notice:

a. By mail to the recipient and in accordance with 907 KAR 1:563; and

b. By fax, telephone, or if necessary by mail (or by secure electronic means if such has been approved by the department) to the party who requested the prior authorization.

(5) The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 days. Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.

(6) Prior authorization of drugs for Medicaid recipients in nursing facilities shall be in accordance with the following:

(a) The department may specify in its drug formulary specific drugs or drug classes which shall:

1. Not be exempted from prior authorization through use of a Kentucky Medicaid Program Request Form for Drugs Prior Authorized for Nursing Facility Residents (MAP-573); or

2. Be exempt from prior authorization for Medicaid recipients in nursing facilities.

(b) A brand name drug for which the department requires completion by the prescriber of a Brand Name Drug Request Form in accordance with Section 4 of this administrative regulation shall not be exempted from prior authorization by use of a MAP-573 Kentucky Medicaid Program Request Form for Drugs Prior-Authorized for Nursing Facility Residents, December 1995 edition.

Section 5. Placement of Drugs on Prior Authorization. (1) Except as excluded by section 3(1)(a)-(c) of this administrative regulation, upon initial coverage by the Kentucky Medicaid Program, a drug that is newly approved for marketing by the Food and Drug Administration under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity shall be exempt from prior authorization unless:

(a) The Pharmacy and Therapeutics Advisory Committee has reviewed the drug and made a recommendation regarding prior authorization and a final determination regarding prior authorization has been made by the secretary; or

(b) The drug is in a specific class of drugs for which the committee has recommended, and the secretary has determined, that all new drugs shall require prior authorization upon initial availability, in which case the drug shall require prior authorization and shall be scheduled for review by the committee within seventy-five (75) days of implementation of a requirement for prior authorization of the

drug.

(2) Upon request by the department, a drug manufacturer shall provide the department with the following information about a drug:

(a) The manufacturer's name, address, telephone number, fax number, and the name of a contact person;

(b) Information about the drug including the name of the drug, the National Drug Code number, the average wholesale price, and the estimated cost per day of therapy;

(c) The date the drug became available on the market;

(d) Whether the drug is one (1) for which the manufacturer has entered into a rebate agreement in accordance with 42 USC 1396r-8(a);

(e) Drug package insert information; and

(f) A statement regarding whether the drug is a new chemical or molecular entity.

(3) The drug review process to determine if a drug shall require prior authorization shall be in accordance with the following:

(a) The determination as to whether a drug is in an excludable category specified in Section 3(1) of this administrative regulation shall be made by the department.

1. If a drug which has been determined to require prior authorization becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug the new strength, package size, or other form shall require prior authorization.

2. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendial or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior approval in accordance with Section 4 of this administrative regulation, unless there has been a review and determination by the department that it is in the best interest of recipients for the department to cover the drug without prior authorization.

(b) The committee shall make a recommendation to the department regarding prior authorization of a drug based on:

1. A review of clinically significant adverse side effects, drug interactions and contraindications and an assessment of the likelihood of significant abuse of the drug; and

2. An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and whether the drug offers a substantial clinically meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication.

(c) Within thirty (30) days of the date the committee's recommendation is posted on the department's web site, the secretary, in consultation with the commissioner and the department's medical director, shall review the recommendations of the committee and make the final determination whether a drug requires prior authorization. If the recommendation of the committee is not accepted, the secretary shall present the basis for the final determination in accordance with Section 8(3) of this administrative regulation.

(4) The department may exclude from coverage or require prior authorization for a drug which is a permissible restriction in accordance with 42 USC 1396r-8(d), as amended.

Section 6. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and  
(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(2) The DMRAB may establish time limits for presentations.

(3) The proposed agenda shall be posted on the department's Internet web site at least five (5) days prior to meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5639(5). The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

Section 7. Pharmacy and Therapeutics Advisory Committee Meeting Procedures. (1) The agenda shall be posted on the department's Internet web site at least fourteen (14) days prior to the date of a regularly scheduled meeting or at least three (3) days prior to a specially called meeting.

(2) The department may prepare written recommendations or options for drug review for the committee. Any recommendations or options shall be posted on the department's Internet web site at least seven (7) days prior to the next regularly scheduled committee meeting or as soon as practicable prior to the date of a specially-called meeting.

(3) The chair of the committee shall manage the meetings in a manner that shall provide for the orderly business of the committee and that shall provide reasonable opportunity for individuals to provide the committee with information in accordance with subsection (4) of this section.

(4) Any individual shall be permitted to make a presentation or provide written comments and documents to the committee in accordance with the following:

(a) The presentation or written comments and documents shall be limited to an agenda item;

(b) A request to make a presentation or provide comments or documents shall be submitted in writing to the department with a copy to the chair of the committee at least twenty-four (24) hours prior to the meeting; and

(c) The time limit for a presentation shall not exceed fifteen (15) minutes in aggregate per drug manufacturer or individual speaking on a particular position. The committee may vote to extend or restrict the time limitation for presentations.

(5) A recommendation by the committee shall require a majority vote.

(6) Recommendations of the committee shall be posted on the department's Internet web site within seven (7) days following the date of the committee meeting.

(7) A drug manufacturer may request that its name be placed on the department's distribution list for agendas of committee meetings. Placement of a drug manufacturer's name on the distribution list shall be valid through December 31 of each year, at which time the drug manufacturer shall be required to again request placement on the distribution list. To request placement of the drug manufacturer's name on the distribution list, the drug manufacturer shall submit the request in writing to the department and shall provide the following information about the drug manufacturer:

- (a) Manufacturer's name;
- (b) Mailing address;
- (c) Telephone number;
- (d) Fax number;
- (e) E-mail address; and
- (f) Name of a contact person.

Section 8. Review and Final Determination by the Secretary. (1) An interested party who is adversely affected by a recommendation of the committee may submit a written exception to the secretary in accordance with the following:

(a) The written exception shall be received by the secretary within seven (7) calendar days of the date of the committee meeting at which the recommendation was made; and

(b) Only information that was not available to be presented at the time of the committee's meeting shall be included in the written exception.

(2) After the time for filing written exceptions has expired, the secretary shall consider the recommendation of the committee all exceptions that were filed in a timely manner prior to making a final determination. The secretary shall issue a final determination, and public notice of the final determination shall be posted on the department's Internet web site for six (6) months after which a copy of the final determination may be requested from the department.

(3) If the secretary makes a final determination and does not accept a recommendation of the committee which was made in accordance with Section 5 of this administrative regulation, the secretary shall present the basis for the final determination at the next scheduled meeting of the committee.

(4) A final determination by the secretary may be appealed in accordance with KRS Chapter 13B. A decision of the secretary to

remand the recommendation to the committee shall not constitute a final decision for purposes of an appeal pursuant to KRS Chapter 13B. The appeal request shall:

(a) Be in writing;

(b) Be sent by mail, messenger, carrier service, or express delivery service to the secretary in a manner that safeguards the information;

(c) State the specific reasons the final determination of the secretary is alleged to be erroneous or not based on the facts and law available to the committee and the secretary at the time of the decision;

(d) Be received by the secretary within thirty (30) days of the date of the posting of the final determination on the department's Internet web site; and

(e) Be forwarded by the secretary to the Administrative Hearings Branch of the Cabinet for Health Services for processing in accordance with the provisions of KRS Chapter 13B.

Section 9. Appeal Rights. A Medicaid recipient may appeal the department's denial, suspension, reduction, or termination of a covered drug based upon an application of this administrative regulation in accordance with 907 KAR 1:563.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-82001 Drug Prior Authorization Request Form, February 8, 2002, edition";

(b) "MAP-82101 Brand Name Drug Request Form, February 8, 2002, edition";

(c) "MAP-012802 PPI and H2 Blocker Request Form, January 28, 2002, edition"; and

(d) "MAP-573 Kentucky Medicaid Program Request Form for Drugs Prior-Authorized for Nursing Facility Residents, December 1995 edition".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. ["Commissioner" is defined in KRS 205.5634(2).]

(2) "Department" means the Department for Medicaid Services or its designated agent.

(3) "DMRAB" means the Drug Management Review Advisory Board.

(4) "Dosage form" means a tablet, capsule, elixir, cream, or other distinct physical formulation of a drug.

(5) "Drug class" means a designation which indicates the therapeutic properties of a drug.

(6) "Drug file" means the Kentucky Medicaid Program drug file consisting of every drug that may be eligible for reimbursement under the Medicaid Pharmacy Program including a drug requiring or not requiring prior authorization.

(7) "FDA" means Food and Drug Administration.

(8) "Manufacturer" is defined in KRS 315.010(12).

(9) "Medically necessary" or "medical necessity" means that a covered benefit shall be:

(a) Provided in accordance with 42 CFR 440.230;

(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(c) Clinically appropriate in terms of amount, scope, and duration based on generally accepted standards of good medical practice;

(d) Provided for medical reasons rather than primarily for the convenience of the member, caregiver or the provider;

(e) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may for practical purposes be safely and effectively provided;

(f) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and

(g) Provided in accordance with early and periodic screening, diagnosis and treatment (EPSDT) requirements established in 42 USC 1396d(r) and 42 CFR Part 441 Subpart B for Medicaid eligible

recipients under twenty-one (21) years of age.

(10) "Official Compendia" is defined in KRS 247.015(31).

(11) "Orphan drug" means a drug or biological product for use in a rare disease or condition that has been designated an orphan drug by the Food and Drug Administration.

(12) "Outpatient drug program" means the program of drug services provided directly by a pharmacist to a Medicaid recipient, including both the drug product and dispensing of the drug.

(13) "Pharmacological category" is defined in KRS 205.5632(4)(b).

(14) "Prescription drug" means a legend drug as defined in KRS 247.015(28).

(15) "Termination date" means the last date, as established by a drug manufacturer, that the drug may be dispensed by a provider.

**Section 2. Covered Benefits and Limitations Relating to the Outpatient Drug Program.** A drug prescribed by a physician, osteopath, dentist, optometrist, advanced registered nurse practitioner, physician assistant, or podiatrist shall be provided in accordance with this administrative regulation.

(1) The drug file shall be maintained in an electronic format and shall be accessed through electronic media via the department's fiscal agent and web site, which may be accessed at:

<http://che.state.ky.us/dms/Drug%20File/extract.doc>

The prior authorization status shall be specified in an electronic format with the drug file. The drug file shall be updated from a national pharmacy pricing service. A copy of the current drug file shall be filed with the Regulations Compiler and shall be available to the public in accordance with Section 11(2) of this administrative regulation. A new drug shall be covered as specified in KRS 205.5632 unless the commissioner documents pursuant to KRS 205.5634(3) that the drug poses a significant safety issue or imposes an inappropriate financial burden upon the Medicaid Program.

(2) The Outpatient Drug Program shall not make payment for:

(a) A drug for which the FDA has issued a "less than effective (LTE)" rating in accordance with 42 USC 1396r-8(k)(2)(A)(ii) (iii) and 21 CFR 340.6(b)(1);

(b) A drug which the FDA has determined is "identical, related, or similar to an LTE" drug in accordance with 42 USC 1396r-8(k)(2)(A)(ii) (iii) and 21 CFR 340.6(b)(1);

(c) A drug for which the drug manufacturer has not entered into or complied with a rebate agreement in accordance with 42 USC 1396r-8(a), unless there has been a review and determination by the department that it shall be in the best interest of Medicaid recipients for the department to make payment for the nonrebated drug;

(d) A drug that has reached the termination date established by the drug manufacturer;

(e) Nursing facility items as follows:

1. Ace bandage;
2. Alfalfa oil;
3. Antiembolism hose;
4. Bedding;
5. Beverages;
6. Bran oil;
7. Chlorophyll;
8. Cleansing agents;
9. Colostomy supplies;
10. Cough drops;
11. Dental rinses;
12. Diabetic supplies;
13. Dressings;
14. Food supplements and supplies related to their administration;

15. Formaldehyde;

16. Gargles;

17. Garlic oil;

18. Gelatin;

19. Glutaraldehyde;

20. Hydrogen peroxide;

21. Iodine;

22. Intravenous catheters and supplies;

23. Kelp;

24. Keratolytic agents;

25. Lecithin tablets;

26. Levine tube;

27. Liniments;

28. Lipotropic agents;

29. Live yeast;

30. Lozenges;

31. Methylsalicylates;

32. Mineral oil;

33. Miscellaneous supplies;

34. Naso-gastric tube;

35. Oat bran;

36. Pigmenting agents;

37. Placebos;

38. Protection items;

39. Povidone-iodine swabs;

40. Rubbing alcohol;

41. Sanitary or personal items;

42. Shark liver oil;

43. Skin lubricant lotions and creams;

44. Soaps;

45. Sulphur;

46. Tannic acid;

47. Vinegar;

48. Wheat bran; or

49. Witch hazel;

(f) A drug or drug class listed in 42 USC 1396r-8(d)(2) unless it is:

1. Placed on the drug file; or

2. Prior authorized in accordance with Section 3(3) of this administrative regulation; or

(g) A drug provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid Program.

(3) The Outpatient Drug Program shall make payment for a drug:

(a) If medically necessary;

(b) If prescribed for a medically accepted indication, as approved by the FDA or documented in official compendia or peer-reviewed medical literature; and

(c) If the drug is:

1. A drug for which the drug manufacturer has entered into and complies with a rebate agreement under 42 USC 1396r-8(a);

2. A drug which has a prior authorized exemption from the rebate agreement granted by the Health Care Financing Administration; or

3. A drug which has an exemption from the department in accordance with subsection (2)(c) of this section.

(4) Limitations within the Outpatient Drug Program.

(a) With the exception of a prescription identified in paragraph (b) of this subsection, a prescription shall not be refilled:

1. More than five (5) times; or

2. More than six (6) months after the prescription has been written.

(b) A prescription requiring a pharmacist to combine more than one (1) active ingredient shall not be refilled more than six (6) months after the date the prescription was first filled.

(c) A recipient placed in lock-in status pursuant to 907 KAR 1:677 shall receive services in accordance with 907 KAR 1:677.

(5) Prescription requirements.

(a) Practitioner authorization shall be evidenced by the actual signature of the prescriber:

1. On each prescription not telephoned to the pharmacy;

2. On a Schedule II controlled substance prescription; or

3. On a prescription in which the prescriber certifies that, in his medical judgment, a specific brand shall be medically necessary for a particular patient. Certification procedures shall be in accordance with 42 CFR 447.331 and 42 USC 1396r-8(e), which mandate the following:

a. The certification shall be written in the prescriber's handwriting;

b. The certification shall be written directly on a prescription blank, nursing facility order sheet, or a separate sheet;

c. The certification document shall be attached to the original prescription or order sheet;

d. If the certification has been written on a separate sheet, the



name of the recipient and the specific medication shall also appear on the sheet;

e. If more than one (1) drug is written on the prescription blank, the certification shall be written for each drug requested; and

f. The certification shall contain the phrase "brand medically necessary" or "brand necessary".

(b) For a telephone prescription, the pharmacist shall enter on the prescription form the name of the prescriber and the initials of the pharmacist.

1. If a prescriber indicates that a specific brand is medically necessary, the pharmacy shall inform the prescriber of the need for a handwritten certification.

2. The certification shall be delivered to the pharmacy by the recipient upon receipt of the prescription or mailed to the pharmacist by the prescriber.

3. The pharmacist shall obtain the prescriber's certification no later than forty-five (45) days from the date the prescription is transmitted by telephone.

(c) A prescriber's identification number shall be made available by a prescriber in writing or orally and shall be recorded by the pharmacist prior to dispensing, to identify a prescriber as follows:

1. A five (5) digit Kentucky license number for a physician licensed in Kentucky or the state license number that authorizes prescriptive privileges for a physician who practices in another state;

2. A Kentucky license number, including applicable alpha characters for a dentist, optometrist, or podiatrist licensed in Kentucky or the state license number that authorizes prescriptive privileges for a dentist, optometrist, or podiatrist who practices in another state;

3. A Kentucky registration number, including alpha characters for an advanced registered nurse practitioner (ARNP) who is registered and designated to engage in advanced registered nursing practice in accordance with KRS 314.042 or the state registration number or unique personal identification number that authorizes prescriptive privileges for an advanced registered nurse practitioner who practices in another state;

4. A Kentucky certification number, including alpha characters for a physician assistant certified to practice in Kentucky or the state certification number or unique personal identification number that authorizes prescriptive privileges for a physician assistant who practices in another state; or

5. The license number of the physician who supervises a physician who does not have a Kentucky state license number on file and who is enrolled in a graduate medical education program.

(d) Quantity requirements. Except as provided in subparagraphs 1, 2, and 3 of this paragraph, a prescription shall be limited to a maximum of thirty (30) day supply.

1. A refill of a maintenance prescription shall not occur less than twenty-three (23) days from the last date the medication was dispensed unless a pharmacist receives a maintenance exception from the department. The pharmacist shall request an exception by completing and submitting a Prior Authorization Request Form, MAP-122 or calling the department's prior authorization telephone number.

2. A prescriber or pharmacist may request an exception to the thirty (30) day maximum supply in accordance with the following:

a. The prescriber shall call one (1) of the toll-free prior authorization lines and make the request. The fiscal agent shall then notify the dispensing pharmacy of the approval for the exception to the thirty (30) day maximum supply requirement; or

b. The pharmacist shall call one (1) of the toll-free prior authorization lines and make the request for the exception.

3. An approval for a thirty (30) day supply exception shall be applicable for a maximum period of six (6) months.

(e) A recipient, not in a nursing home or personal care facility, or his designee shall sign for receipt of dispensed medication.

Section 3. Prior Authorization. (1) A medication which requires prior authorization shall be covered if prior authorization is approved pursuant to the procedures established in this section.

(2) If a drug has been prior authorized, it shall be authorized singularly or as a group for a recipient in a nursing facility bed if the recipient meets the patient status criteria established in 907 KAR 1:022 unless the commissioner requires individual prior authorization, in accordance with drug class parameters.

(3) Procedure for prior authorization.

(a) A request for prior authorization shall be made by the prescriber, the prescriber's designee, or a pharmacist by:

1. Completing a Prior Authorization Request Form MAP-122 and faxing or mailing the form to the department's fiscal agent; or

2. A telephone call to the fiscal agent, Monday through Friday (except holidays). The caller shall provide the information from the form MAP-122.

(b) If other clinically appropriate drugs are available, a basis for denial of prior authorization shall be failure of the prescriber to provide documentation that:

1. Previous drug therapy was unsuccessful;

2. A clinically significant adverse reaction occurred with previous drug therapy;

3. A clinical contraindication exists for the use of other drugs available without prior authorization;

4. A clinically significant drug interaction or adverse reaction would reasonably be expected with the use of other drugs available without prior authorization; or

5. Use of other drugs available without prior authorization would be clinically ineffective.

(c) The pharmacy initially selected by a recipient who has been placed in the lock-in program in accordance with 907 KAR 1:677 shall remain the provider during the period of the prior authorization unless the department has determined that a valid reason for a change exists, in accordance with 907 KAR 1:677, Section 2.

(d) The maximum period for which a drug shall be prior authorized shall be six (6) months. Renewal of authorization shall be based on medical necessity.

(4) Disposition of a prior authorization request.

(a) The fiscal agent shall review and process each prior authorization request.

(b) If the request has been submitted in writing, the provider initiating the request shall be notified of the approval or the denial decision by mail or fax.

(c) If the request is made by telephone, the provider shall be notified of the approval or denial decision at that time.

(d) If the medication is to be started within twenty-four (24) hours, based on the date listed on the MAP-122, the pharmacy shall be notified by telephone.

(e) If a medication has not been approved pursuant to Section 2(2) of this administrative regulation, the prescriber may request a second review of a denied or pending request by the department. The request for a second review shall include the following:

1. A prescriber shall mail or fax to the department a letter explaining the medical necessity of the denied drug.

2. The department shall review a request based on medical necessity in accordance with official compendia or medical literature.

3. If approved, the department shall notify the pharmacy of the approval.

4. If denied, the requestor of the prior authorization and the recipient for whom the prescription was written shall be notified with the reason for the denial.

(f) Unless retroactive coverage is requested, the effective date for coverage of a prior authorized drug shall begin on:

1. The begin date indicated on the MAP-122. If no begin date is indicated on the MAP-122, the effective date shall be:

a. The date entered on the MAP-122; or

b. The received date stamped on the MAP-122; or

2. The date a telephone request is received.

(g) The prior authorization shall remain in effect for an eligible recipient for the approved period of time unless the National Drug Code meets the requirements of Section 2(2)(a) through (d) of this administrative regulation.

(h) Nursing home recipients. Except as provided in subsection (2) of this section, an eligible Medicaid recipient in a nursing facility, meeting Medicaid patient criteria established in 907 KAR 1:022, shall be exempt from the prior authorization process if a form MAP-573 is completed by the facility.

Section 4. Drug Status Review Process for the First Twelve (12) Months. (1) Except as provided by this section or as excluded by Section 2(2) of this administrative regulation, a drug shall be covered for the first twelve (12) months on the market without prior

authorization.

(2) The factors established in subsections (3) and (4) of this section shall be considered by the department in determining whether prior authorization shall be required for a drug during the first twelve (12) months the drug is on the market.

(3) A determination shall be made whether the drug expense would favorably offset another patient care cost, including:

- (a) A hospitalization;
- (b) An emergency room visit;
- (c) A physician visit; or
- (d) Costs associated with diminished quality of life.

(4) A drug shall require prior authorization if the department has documented evidence that cost or safety concerns outweigh the benefit to a Medicaid recipient that would be gained by retaining the drug on the nonprior authorized drug file.

(a) The following criteria shall be used to screen for a drug that may result in an undesirable cost profile:

- 1. In any six (6) month period, the total cost of prescriptions for the drug to the department ranks in the top fifty (50) of drugs reimbursed by Medicaid;
- 2. The cost per prescription exceeds twice the average cost of drugs within its therapeutic class;
- 3. The combination of cost per prescription and volume results in an increased program expense that places the drug in the top fifty (50) of drugs reimbursed by Medicaid;
- 4. The drug is partially or completely reimbursed by Medicare or another payment system; and
- 5. A generic drug within the same therapeutic class shall not be compared to a brand name drug. Available utilization data shall be used.

(b) The following criteria shall be used to screen for a drug that may result in an undesirable safety profile:

- 1. The drug has been documented to have a potential for recipient abuse as defined in KRS 205.8451(10);
- 2. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration, in accordance with official compendia and the drug package insert; and
- 3. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:
  - a. Significant adverse events that were not previously known; or
  - b. Significant morbidity or mortality.

(5) Upon request by the department, the manufacturer shall provide the following information within ten (10) working days. The manufacturer may provide the requested information on form DMRAB-004:

- (a) Company name;
- (b) Brand product name;
- (c) Generic name;
- (d) FDA approval date;
- (e) Date introduced into United States market;
- (f) American Hospital Formulary Service therapeutic class and code;
- (g) FDA approval class, 1B, 1S, and orphan drugs;
- (h) FDA Approved Drug Products therapeutic equivalence code.

A copy of the respective page of the Supplement shall be provided;

- (i) Patent expiration date;
- (j) HCFA rebate drug designation;
- (k) FDA approved indication;
- (l) Side effects or toxicity;
- (m) Name, strength, dosage form, usual daily dose and cost of treatment per day of comparable drugs on drug file;
- (n) Specific advantages compared to other available drugs not requiring prior authorization or statement of why this drug should not require prior authorization;

(o) Most used indications, strength, dosage form, package size, National Drug Code number, average wholesale price, usual daily dosage, cost of treatment per day, average length of therapy;

(p) Name, address, FAX number, telephone number, and e-mail address of the manufacturer's contact person;

(q) A statement indicating which drugs currently not requiring prior authorization may be changed to require prior authorization with no appreciable therapeutic loss to patient benefit and no significant dollar cost to the program if this drug is made available without

prior authorization; and

(r) If available, clinical and pharmacoeconomic study citations.

(6) After the department has determined that a drug shall require a prior authorization:

(a) The department shall notify the manufacturer of the drug, in writing, that the drug shall require prior authorization;

(b) The notification shall include the reasons for the determination that the drug shall require prior authorization; and

(c) The determination of the department shall be presented at the next DMRAB meeting that has been scheduled to meet at least two weeks subsequent to the date of notification to the manufacturer.

(7) Information concerning Kentucky Medicaid's drug prior authorization process shall be placed on the following web site at: <http://www.uky.edu/OtherOrgs/KyMedicaidDrug>.

**Section 5. Drug Status Review Process After the First Twelve (12) Months.** (1) After a drug has been on the market for twelve (12) months, the department may conduct an evaluation due to concerns regarding cost or safety.

(2) The factors established in subsections (3) and (4) of this section shall be considered in determining whether prior authorization shall be required for a drug after it has been on the market for twelve (12) months.

(3) A determination shall be made whether the drug expense would favorably offset another patient care cost, including:

- (a) A hospitalization;
- (b) An emergency room visit;
- (c) A physician visit; or
- (d) Costs associated with diminished quality of life.

(4) A drug shall require prior authorization if the department has documented evidence that cost or safety concerns outweigh the benefit to a Medicaid recipient that would be gained by retaining the drug on the nonprior authorized drug file.

(a) The following criteria shall be used to screen for a drug that may result in an undesirable cost profile:

- 1. In any six (6) month period, the total cost of prescriptions for the drug to the department ranks in the top fifty (50) of drugs reimbursed by Medicaid;
- 2. The cost per prescription exceeds twice the average cost of drugs within its therapeutic class;
- 3. The combination of cost per prescription and volume results in an increased program expense that places the drug in the top fifty (50) of drugs reimbursed by Medicaid;
- 4. The drug is partially or completely reimbursed by Medicare or another payment system; and
- 5. A generic drug shall be compared to a brand name drug to ensure a complete review of the drug class.

(b) The following criteria shall be used to screen for a drug that may result in an undesirable safety profile:

- 1. The drug has been documented to have a potential for recipient abuse as defined in KRS 205.8451(10);
- 2. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration, in accordance with the official compendia and the drug package insert; and
- 3. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:
  - a. Significant adverse events that were not previously known; or
  - b. Significant morbidity or mortality.

(5) Upon request by the department, the manufacturer shall provide the requested information identified in Section 4(5) of this administrative regulation.

(6) Once requested information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department within thirty (30) calendar days.

(7) A copy of the written final disposition taken by the department shall be:

- 1. Forwarded to the:
  - a. Appropriate participating providers;
  - b. DMRAB;
  - c. Manufacturer; and
  - d. Legislative Research Commission to be distributed to appro-

priate committees; and

2. Posted to the Internet web site specified in Section 4(7) of this administrative regulation.

(8) Information concerning Kentucky Medicaid's drug prior authorization process shall be placed on the following web site at: <http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>

**Section 6. Comparable Drug Review.** (1) Prescription drugs on the prior authorized drug file shall be placed on the nonprior authorized drug file if the comparable drug criteria of subsections (3) and (4) of this section are met.

(2) A comparable drug review shall be performed by a health care practitioner, pharmacist, physician, or faculty member of a health science school in a university medical center within Kentucky. Health science schools shall include pharmacy, medicine, dentistry, nursing, public health, and allied health.

(3) Based on review of official compendia and peer-reviewed medical literature, the drug shall:

- (a) Be within the same pharmacological category;
- (b) Have comparable efficacy;
- (c) Have a comparable clinical application; and
- (d) Have comparable safety standards and lack the undesirable safety profile specified in Section 4(4)(b) of this administrative regulation;

(4) Based on the average wholesale price, the drug shall have comparable cost determined by a review of:

- (a) Cost per day of drug therapy;
- (b) A complete period of therapy; and
- (c) The diagnosis for which the drug is approved.

(5) A drug removed from prior authorization in accordance with the comparable drug criteria of subsections (3) and (4) of this section shall be placed on prior authorization if the comparable drug subsequently becomes prior authorized in accordance with Sections 4, 5, or 7 of this administrative regulation.

(6) Upon request by the department, the manufacturer shall provide the requested information identified in Section 4(5) of this administrative regulation.

(7) If the department determines that a drug shall remain on prior authorization:

- (a) The department shall notify the manufacturer of the drug, in writing, that the drug shall remain on prior authorization;
- (b) The notification shall include the reasons for the determination that the drug shall remain on prior authorization; and
- (c) The determination by the department shall be presented at the next DMRAB meeting for informational purposes.

(8) A copy of the written notification regarding final disposition taken by the department shall be posted to the Internet web site specified in Section 4(7) of this administrative regulation.

(9) Information concerning Kentucky Medicaid's drug prior authorization process shall be placed on the following web site at: <http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>

**Section 7. Requested Review Process.** (1) An interested party requesting a drug status review relating to Medicaid coverage of a specified drug shall submit a request in writing or electronically to the department.

(2) The department shall forward a written acknowledgment of receipt of the status review request and the current drug status to the requester within ten (10) working days of receipt.

(3) Upon request by the department, the manufacturer shall provide the requested information identified in Section 4(5) of this administrative regulation.

(4) Upon receipt of the requested information from the manufacturer, the department shall initiate the drug status review. The drug status review shall consist of the following:

- (a) A determination of whether the reimbursement is excluded in accordance with Section 2(2) of this administrative regulation;
- (b) A determination of whether the drug represents a new strength, dosage form, delivery system, or clinical indication comparable to other drugs listed in the Medicaid drug file; and
- (c) A determination of whether the drug has:
  - 1. A unique therapeutic indication; or
  - 2. Fewer or less clinically significant adverse side effects or drug interactions.

(5) The department shall determine if a review of a drug product shall be conducted.

(a) A review shall be performed by a health care practitioner, pharmacist, physician, or faculty member of a health science school in a university medical center within Kentucky. Health science schools shall include pharmacy, medicine, dentistry, nursing, public health, and allied health.

(b) A review shall include the following:

- 1. Comparison to other products on the drug file, including cost;
- 2. Primary indication for use and therapeutic classification;
- 3. Prominent advantages and disadvantages of the product;
- 4. A recommendation regarding prior authorization status of a drug;
- 5. Discussion of applicable studies from the medical literature; and
- 6. Discussion of applicable pharmacoeconomic studies.

(6)(a) The department shall present drug review recommendations to the Drug List/Prior Authorization Subcommittee.

(b) A person may address the Drug List/Prior Authorization Subcommittee if the subject is directly related to an agenda item.

(c) The Subcommittee recommendation shall be sent to the DMRAB for review.

(d) The recommendation from the DMRAB, available pursuant to KRS 61.805 through 61.850, shall be sent to the commissioner of the department for his approval or denial.

(7)(a) The department may seek additional documented information from another clinical source regarding a recommendation made by the DMRAB.

(b) Once requested information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department within thirty (30) calendar days regarding the acceptance or rejection of the recommendation of the DMRAB.

(c) Subsequent to the decision, if new evidence including safety, efficacy, or cost becomes available from another source, the department may direct that the issue be re-reviewed by the DMRAB.

(d) A copy of the written final disposition taken by the department shall be:

- 1. Forwarded to the:
  - a. Appropriate participating providers;
  - b. DMRAB;
  - c. Manufacturer; and
  - d. Legislative Research Commission to be distributed to appropriate committees; and
- 2. Posted to the Internet web site specified in Section 4(7) of this administrative regulation.

(8) Information concerning Kentucky Medicaid's drug prior authorization process shall be placed on the following web site at: <http://www.uky.edu/OtherOrgs/KyMedicaidDrug/>

**Section 8. DMRAB Open Meeting Procedures.** (1) A person may address the DMRAB if:

- (a) The presentation is directly related to an agenda item; and
- (b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(2) The DMRAB may establish time limits for presentations.

(3) The proposed agenda shall be placed on the Internet web site specified in Section 4(7) of this administrative regulation at least five (5) calendar days prior to the meeting.

**Section 9. Appeals Involving Placement of Drugs on Prior Authorization.** (1) The commissioner shall enter the final decision on a recommendation of the DMRAB in accordance with KRS 205.5630(3).

(2) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5630(5).

(3) The appeal request shall:

- (a) Be in writing;
- (b) State the specific reasons the manufacturer believes the final decision to be incorrect;
- (c) Provide any supporting documentation; and
- (d) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.



~~(4) The appeal shall be conducted in accordance with KRS Chapter 13B.~~

~~Section 10. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.~~

~~(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.~~

~~(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:674.~~

~~Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Form MAP 122, Drug Prior Authorization/Authorization to Bill, 10/98 edition, Department for Medicaid Services;~~

~~(b) Form MAP 573, For Drugs Prior Authorized for Nursing Facility Residents, 10/98 edition, Department for Medicaid Services; and~~

~~(c) DMRAB 001, Drug Product Information Form Kentucky Outpatient Drug List, 4/99 edition, Department for Medicaid Services.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

MIKE ROBINSON, Commissioner

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: April 8, 2002

FILED WITH LRC: April 19, 2002 at 10 a.m.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for coverage of drugs through the Department for Medicaid Services (DMS) Outpatient Pharmacy Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions for coverage of drugs through the Department for Medicaid Services (DMS) Outpatient Pharmacy Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions for coverage of drugs through the Department for Medicaid Services (DMS) Outpatient Pharmacy Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the provisions for coverage of drugs through the Department for Medicaid Services (DMS) Outpatient Pharmacy Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation revise the criteria used to review medications to be placed on the drug formulary, describe drugs that may be on the drug formulary, revise the drug prior authorization process and accompanying forms, define the role and responsibilities of the Pharmacy and Therapeutics Advisory Committee in accordance with HB 103 of the 2002 Session of the General Assembly, and comply with new drug requirements established in HB 103 of the 2002 Session of the General Assembly.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to revise the criteria used to review medications to be placed on the drug formulary, to describe drugs that may be on the drug formulary, to revise the prior authorization process and accompanying forms, to define the role and responsibilities of the Pharmacy and Therapeutics Advisory Committee in accordance with HB 103 of the 2002 Session of the General Assembly, and to comply with new

drug requirements established in HB 103 of the 2002 Session of the General Assembly.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to this administrative regulation conform to the content of the authorizing statutes by revising the criteria used to review medications to be placed on the drug formulary, by describing drugs that may be on the drug formulary, by revising the prior authorization process and accompanying forms, by defining the role and responsibilities of the Pharmacy and Therapeutics Advisory Committee in accordance with HB 103 of the 2002 Session of the General Assembly, and by complying with new drug requirements established in HB 103 of the 2002 Session of the General Assembly.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of the authorizing statutes by revising the criteria used to review medications to be placed on the drug formulary, by describing drugs that may be on the drug formulary, by revising the prior authorization process and accompanying forms, by defining the role and responsibilities of the Pharmacy and Therapeutics Advisory Committee in accordance with HB 103 of the 2002 Session of the General Assembly, and by complying with new drug requirements established in HB 103 of the 2002 Session of the General Assembly.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect the entire Medicaid-eligible population, all prescribers of drugs, all pharmacy providers, as well as pharmaceutical manufacturers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendments to this administrative regulation may increase provider responsibility when requesting approval for medications requiring prior authorization.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: State fiscal year (SFY) 2002 costs are indeterminable.

(b) On a continuing basis: SFY 2003 costs are indeterminable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, and matching funds of General Fund appropriations and collections will be used to fund the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendments to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## STATEMENT OF EMERGENCY 907 KAR 1:145E

This emergency administrative regulation is being promulgated in accordance with KRS 13A.190(1)(a)1 to ensure that supports for community living (SCL) service providers comply with local, state and federal requirements regarding employees with infectious diseases. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health,

safety or welfare of SCL recipients. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on October 10, 2001, in that it mandates that SCL providers comply with all local, state and federal requirements regarding employees with infectious diseases. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor  
MARCIA MORGAN, Secretary

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Long Term Care**  
**(Emergency Amendment)**

**907 KAR 1:145E. Supports for community living services for an individual [individuals] with mental retardation or a developmental disability [disabilities].**

RELATES TO: KRS 205.520, 42 CFR 441 [44], Subpart G, 42 USC 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 205.6317 [194.050, EO 96-862]

EFFECTIVE: April 16, 2002

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. ~~[Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.]~~ KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any [a] requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions relating to home and community-based services provided to an individual with mental retardation or a developmental disability [disabilities] as an alternative to placement in an intermediate care facility for an individual with mental retardation or a developmental disability ~~[services for the mentally retarded]~~.

Section 1. Definitions. (1) "Behavior intervention committee" or "BIC" means a group of individuals, one (1) of which shall have expertise in behavior intervention and shall not be the behavior specialist who wrote the behavior intervention plan. This group is established to evaluate the technical adequacy of proposed behavior intervention of an SCL recipient.

(2) "Behavior specialist" means an individual who has a master's degree with formal graduate course work in behavioral science and at least one (1) year of experience in behavioral programming.

(3) "DCBS" means the Department for Community Based Services.

(4) "Department" means the Department for Medicaid Services or its designee.

(5) "DMHMR" means the Department for Mental Health and Mental Retardation.

(6) "Human rights committee" means a group of individuals established to protect the rights and welfare of an SCL recipient.

(7) "ICF/MR/DD" means an intermediate care facility for individuals with mental retardation or a developmental disability.

(8) "Individual support plan" or "ISP" means a written individualized plan developed by an SCL recipient, or an SCL recipient's legal representative, support coordinator, or others designated by an SCL recipient.

(9) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(10) "Psychologist" means an individual who is licensed in accordance with KRS 319.050.

(11) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(12) "Qualified mental retardation professional" or "QMRP" means an individual who has at least a bachelor's degree in a hu-

man services field and at least one (1) year of experience working with individuals with mental retardation or other developmental disabilities.

(13) "SCL recipient" means an individual who:

(a) Meets the criteria for a recipient as defined in KRS 205.8451(9);

(b) Meets the ICF/MR/DD level of care requirements as defined in 907 KAR 1:022; and

(c) Meets the eligibility criteria for SCL waiver services established in Section 4 of this administrative regulation.

(14) "Specialized medical equipment and supplies" means devices, controls or appliances to promote the independence of an SCL recipient.

(15) "Speech pathologist" means an individual who is licensed in accordance with KRS 334A.030.

(16) "Support coordinator" means an individual who has a bachelor's degree in human services, is supervised by a QMRP, and works closely with an SCL recipient to ensure his ongoing satisfaction with the process and outcomes of the supports, services and available resources.

(17) "Supports for community living" or "SCL" means home and community based waiver services for an individual with mental retardation or a developmental disability. ~~["Supports for community living (SCL)" means community-based waiver services for an individual with mental retardation or developmental disabilities.]~~

(2) "Wellness monitoring" means a process in which a registered nurse:

(a) Evaluates the level of wellness of a recipient to determine if:

1. The recipient is properly using the medical health services being provided; and

2. The health of the recipient is sufficient to maintain him in his place of residence without more frequent skilled nursing intervention; and

(b) Does not provide direct treatment to the recipient.]

Section 2. Provider Participation. (1) In order to provide an SCL waiver service, pursuant to Section 5 of this administrative regulation, an SCL waiver provider shall be certified prior to the initiation of services and at a minimum of annually upon certification by the department and shall have a main office within the Commonwealth of Kentucky.

(2) An SCL waiver provider shall:

(a) Comply with 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:673 and 902 KAR 20:078;

(b) Have a governing body which shall be a legal entity in the Commonwealth of Kentucky and be responsible for the overall operation of the organization;

(c) Not enroll an SCL recipient for whom they cannot meet the support needs;

(d) Have the freedom to accept or deny an SCL recipient; and

(e) Document a denial and identify resources necessary to successfully support the denied SCL recipient in the community.

(3) An SCL waiver provider shall maintain fiscal and service records and incident reports regarding SCL waiver services provided for a minimum of five (5) years from the date that a covered service is provided.

(4) Upon request, an SCL waiver provider shall make information available regarding fiscal and service records to the following:

(a) The department;

(b) The Commonwealth of Kentucky, Cabinet for Health Services, DMHMR or its designee;

(c) The Commonwealth of Kentucky, Cabinet for Health Services, Office of Inspector General or its designee;

(d) The United States General Accounting Office or its designee;

(e) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee;

(f) The Commonwealth of Kentucky, Office of the Attorney General or its designee; and

(g) The Commonwealth of Kentucky, Cabinet for Families and Children or its designee.

(5) An SCL waiver provider shall:

(a) Establish and follow written guidelines for communication and interaction of staff with an SCL recipient's family or legal representative;

- (b) Follow all local, state and federal guidelines relative to employees with infectious diseases;
- (c) Maintain documentation of the results of the annual tuberculosis test for each staff member;
- (d) Have written personnel guidelines for each employee;
- (e) For a potential employee, obtain a statewide criminal record checks from the state police, the Administrative Office of the Courts or other nationally-recognized reporting agency:
  1. Prior to employment and annually thereafter if the individual is hired;
  2. For each state resided in during the previous year; and
  3. For utilization of the results in determining employment suitability;
- (f) Not employ an individual with a prior conviction of an offense delineated in KRS 17.165(1)-(3) or prior felony conviction;
- (g) Require that the following personnel qualifications shall be met through the employment of:
  1. An executive director by the governing body who shall be qualified with a bachelor's degree in administration or a human services field and a minimum of one (1) year of administrative responsibility in an organization which served individuals with mental retardation or a developmental disability;
  2. A program director who:
    - a. Shall be a QMRP;
    - b. Shall have a minimum of one (1) year of supervisory responsibility in an organization supporting individuals diagnosed with mental retardation or a developmental disability; and
    - c. May serve as an executive director if the qualifications are met as required in paragraph (g) of this subsection.
  3. Adequate direct-contact staff based on the needs of an SCL recipient. Direct contact staff shall be eighteen (18) years or older with a high school diploma or GED or be twenty-one (21) years old and have effective communication skills; and
  4. Adequate supervisory staff based on the needs of an SCL recipient. Supervisory staff shall be eighteen (18) years or older with a high school diploma or GED or be twenty-one (21) years old and have a minimum of one (1) year experience in providing services to individuals with mental retardation or a developmental disability;
- (h) Establish and follow written guidelines which address health and safety, including maintenance of sanitary conditions, for SCL recipients and ensure each site operated by the organization is equipped with:
  1. Operational smoke detectors placed in strategic locations in each service site; and
  2. A minimum of two (2) fire extinguishers in each service site:
    - a. Which shall be correctly charged;
    - b. Which shall be placed in strategic locations; and
    - c. One (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;
  - (i) Establish and follow written guidelines for handling an emergency or a disaster;
  - (j) Require that the nutritional needs of an SCL recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;
  - (k) Ensure that staff administering medication:
    1. Have specific training on cause and effect and proper administration and storage of medication; and
    2. Document all medication administered on a medication log and ensure medications shall:
      - a. Be kept in a locked container;
      - b. Accompany and be administered to an SCL recipient at a program site other than his residence if necessary; and
      - c. Be documented on a medication administration form and properly disposed of, if discontinued;
    - (l) If operating a residence:
      1. Have a separate sleeping room for SCL recipients who are:
        - a. Of the opposite sex; or
        - b. Under the age of eighteen (18) if a roommate would have an age variance of more than five (5) years or present a threat; and
      2. Have a separate bed for each SCL recipient which shall be equipped with substantial springs, a clean and comfortable mattress, and clean bed linens;
    - (m) Ensure the provision of Phase I and Phase II, and continu-

- ing in-service training of all staff as established in the "Supports for Community Living Manual" and defined by DMHMR;
- (n) If providing behavioral support:
  1. Establish and implement written guidelines developed by a behavior specialist which shall:
    - a. Define the behavior support techniques and procedures used;
    - b. Include the hierarchy of behavior interventions ranging from the least to the most restrictive; and
    - c. Reflect the use of positive approaches; and
  2. Prohibit the use of corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of bathroom facilities;
  - (o) If offering support coordination:
    1. Be responsible for documentation and communication of the SCL recipient's individual record containing:
      - a. Social history updated annually;
      - b. Psychological evaluation;
      - c. Annual physical examination;
      - d. Original, current and previous ICF/MR/DD level of care determinations;
      - e. Current ISP documentation of services available to an SCL recipient for a program funded under 20 USC Chapter 33;
      - f. Financial records;
      - g. MAP-552 or MAP-105;
      - h. MAP-350 updated annually and MAP-24;
      - i. A monthly summary note documenting the monitoring of ISP outcomes; and
      - j. Legally adequate consents;
    2. Establish and follow guidelines to ensure timely distribution of the ISP to all SCL waiver providers who are providing services to an SCL recipient;
    3. Work in conjunction with SCL waiver providers selected by an SCL recipient to develop a crisis prevention plan which shall be:
      - a. Individual-specific;
      - b. Annually reviewed; and
      - c. Updated as changes occur;
    4. Furnish an SCL recipient and legal representative or advocate written information describing the services of all available SCL waiver providers in the service area;
    5. Ensure questions related to service options are addressed;
    6. Maintain written documentation of informed choice, signed by the SCL recipient or legal representative, of a change to the selection of providers and the reason for the change; and
    7. Upon termination of services to an SCL recipient, be responsible, in conjunction with the terminating provider for:
      - a. Documentation of efforts to meet an SCL recipient's needs and events which resulted in the termination decision;
      - b. Notification to the SCL recipient, legal representative, and the DMHMR in writing at least twenty (20) days prior to the date services will stop;
      - c. Offering hearing and appeal rights, based on the provider's policy;
      - d. Offering a listing of all current SCL waiver providers in the state including addresses and phone numbers;
      - e. Providing assistance in making contact with a chosen provider;
      - f. Arranging transportation for a requested visit to a new provider site;
      - g. Providing a copy of all assessments and other pertinent information to the SCL recipient or legal representative;
      - h. Ensuring the health, safety, and welfare of the SCL recipient until an appropriate placement is secured; and
      - i. Providing additional information to a new provider which will enhance a safe and effective service transition;
  - (p) If offering a residential service, meet the following requirements:
    1. The residential service shall include:
      - a. Physical assistance;
      - b. Residential training to facilitate the acquisition of communication skills, sensorimotor skills, daily living, and self-help;
      - c. Emotional support, advice, and assistance to aid the SCL recipient in resolving problems;
      - d. Communication with the assigned support coordinator on a

regularly scheduled basis or as needed;

e. Provision of transportation to services, activities, and medical appointments as the SCL recipient chooses;

f. Active participation in medical appointments and follow-up care as directed by the medical staff; and

g. Cooperation with monitoring; and

2. Maintain monthly detailed staff notes which shall document services provided and ISP outcomes;

(q) Upon offering community living supports, respite, community habilitation, supported employment, or prevocational services, be responsible for documenting time and attendance and keeping monthly detailed staff notes; and

(r) Upon offering occupational, physical, or speech therapy, meet the following requirements:

1. A therapeutic support shall assist the SCL recipient in obtaining the highest level of functioning and not include maintenance or prevention of regression;

2. A therapeutic provider shall train appropriate staff to maintain the level of functioning and prevent regression; and

3. A therapeutic provider shall maintain detailed staff notes, which shall include beginning and ending times. ~~General Coverage Provisions. (1) Except as provided in subsection (2) of this section, SCL services shall be provided to an individual eligible for Medicaid;~~

~~(a) Who meets patient status criteria for intermediate care for the mentally retarded in accordance with 907 KAR 1:022;~~

~~(b) Who is in a community residence living situation; and~~

~~(c) For whom SCL services are an appropriate alternative to institutionalization.~~

~~(2) SCL services shall not be provided to an individual who;~~

~~(a) Is an inpatient of a hospital;~~

~~(b) Is a resident of a nursing facility; or~~

~~(c) Is an inpatient of a facility for the mentally retarded.~~

~~(3) An individual eligible for Medicaid who is an inpatient or resident of a facility identified in subsection (2) of this section;~~

~~(a) May apply for an SCL service while the individual is an inpatient or resident of the identified facility; and~~

~~(b) Shall not receive the service while the individual is an inpatient or resident of the identified facility.~~

~~(4) The department may exclude from coverage an individual for whom the cost of SCL services exceeds the cost of the appropriate level of institutional care, if aggregate expenditures for the program are projected to exceed the corresponding institutional cost of comparable services, as provided for in 42 USC 1396n(c)(3).~~

~~(5) The SCL service agency shall provide one (1) or more of the services as outlined in Section 4 of this administrative regulation.~~

~~(6) The federally designated Peer Review Organization (PRO) shall make the level of care determination as the agent of the department.~~

Section 3. Incident Reporting Process. (1) An incident shall be documented on an incident report form; and

(2) There shall be three (3) classes of incidents including:

(a) A class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the support coordination provider within twenty-four (24) hours; and

4. Be retained on file at the provider and support coordination agency;

(b) A class II incident which shall:

1. Be serious in nature;

2. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the support coordinator; and

3. Be reported to the following by the provider agency:

a. The support coordinator within twenty-four (24) hours of discovery;

b. The guardian within twenty-four (24) hours of discovery; and

c. The assistant director of the Division of Mental Retardation, DMHMR or its designee within ten (10) calendar days of discovery and shall include a complete written report of the incident investigation and follow up; and

(c) A class III incident which shall:

1. Be grave in nature;

2. Be immediately investigated by the provider agency, and the investigation shall involve the support coordinator; and

3. Be reported to the following by the provider agency:

a. The support coordinator within eight (8) hours of discovery;

b. The guardian within eight (8) hours of discovery;

c. DCBS within eight (8) hours of discovery; and

d. The assistant director of the Division of Mental Retardation, DMHMR or its designee within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. ~~Provider Participation. (1) A participating SCL service provider shall meet the applicable certification requirements for providing community-based waiver services in accordance with 907 KAR 1:671, 907 KAR 1:672 and 907 KAR 1:675.~~

~~(2) Group homes shall be licensed by the Commonwealth of Kentucky in accordance with 902 KAR 20:078.]~~

~~(2) Group homes shall be licensed by the Commonwealth of Kentucky in accordance with 902 KAR 20:078.]~~

Section 4. SCL Recipient Eligibility Determination and Re-determination. (1) An SCL waiver service shall be provided to an SCL recipient who is determined by the department to meet ICF/MR/DD level of care requirements established in 907 KAR 1:022.

(2) An ICF/MR/DD level of care determination regarding an SCL recipient shall be performed by the department at least once every twelve (12) months.

(3) An SCL waiver service shall not be provided to an SCL recipient who is receiving a service in another Medicaid waiver program or is an inpatient of an ICF/MR/DD or other facility.

(4) An SCL waiver provider shall effectively inform an SCL recipient or his legal representative of the choice to receive SCL waiver services or institutional services and require an SCL recipient to sign a MAP-350 to document the informed choice.

(5) An SCL waiver provider shall notify the local DCBS office and the department on a MAP-24 form:

(a) To initiate SCL waiver services; and

(b) If an SCL recipient is:

1. Terminated from the SCL Waiver Program;

2. Admitted to an ICF/MR/DD facility; or

3. Transferred to another waiver program.

(6) An eligible SCL recipient or legal guardian shall have freedom of choice of participating SCL waiver providers.

(7) The department may exclude from receiving SCL waiver services an individual for whom the aggregate cost of SCL waiver services would reasonably be expected to exceed the cost of ICF/MR/DD services.

(8) The criteria for voluntary and involuntary termination and loss of an SCL Waiver Program placement shall include:

(a) The SCL recipient's failure to access SCL waiver services within sixty (60) days of allocation of funding without good cause shown;

(b) The SCL recipient's or legal representative's failure to access required services as outlined in the ISP for a period greater than ninety (90) consecutive days unless good cause can be shown; the burden of which shall be borne by the SCL recipient;

(c) The SCL recipient's death;

(d) The SCL recipient's change of residence outside the Commonwealth of Kentucky;

(e) The SCL recipient's election to leave the SCL program voluntarily as expressed by a written notice of intent to discontinue services which shall be given to the service provider and to the DMHMR. No action to terminate services shall be initiated until thirty (30) calendar days from the date of the notice has passed in which the SCL recipient may reconsider and revoke the notice; or

(f) The denial of level of care of the SCL recipient.

(9) SCL termination procedures shall include:

(a) Compliance with 907 KAR 1:563 if the department initiates the involuntary termination from the SCL Waiver Program;

(b) Simultaneous notice to the SCL recipient or legal representative and the support coordinator of involuntary termination or intention to reallocate placement at least ten (10) days prior to the effective date of the action. The notice shall include:

1. A statement of the action taken;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The SCL recipient's right to appeal the determination through the provider's appeal or grievance process; and

(c) Submittal of a DMR-001 to the DMHMR at least twenty (20) days prior to the effective date of the termination, if termination is initiated by an SCL service provider. ~~Covered Services. (1) The following shall be covered SCL services:~~

~~(a) Residential support services provided to an individual residing in an alternative living arrangement, which shall be a:~~

- ~~1. Group home;~~
- ~~2. Staffed residence; or~~
- ~~3. Family home;~~

~~(b) Support coordination as follows:~~

~~1. Initiation and ongoing monitoring of admission, assessment and eligibility processes;~~

~~2. Development and monitoring of an individual support plan;~~

~~3. Ensuring access to and freedom of choice of SCL providers;~~

~~4. Monitoring of the health, safety and welfare of the individual by a support coordinator;~~

~~5. Ensuring the availability of a waiver service;~~

~~6. Providing pertinent information to an individual, parent or legal representative;~~

~~7. Establishing and overseeing a human rights committee for the review of overall procedures and individual behavior plans;~~

~~8. Acting on behalf of the individual to assist in gaining access to and receiving services from qualified SCL providers; or~~

~~9. Providing assistance to the individual, his family or legal representative in accessing another service as needed;~~

~~(c) Community living supports provided to an individual in the individual's home and not in an alternative living arrangement as identified in paragraph (a) of this subsection, to assist, train or support in activities including:~~

- ~~1. Laundry services;~~
- ~~2. Meal preparation;~~
- ~~3. Household care or maintenance;~~
- ~~4. Daily living skills;~~
- ~~5. Socialization;~~
- ~~6. Relationship building;~~
- ~~7. Leisure choices; or~~
- ~~8. Participation in community activities;~~

~~(d) Behavioral support;~~

~~(e) Psychological services;~~

~~(f) Occupational therapy;~~

~~(g) Physical therapy;~~

~~(h) Speech therapy;~~

~~(i) Community habilitation services to provide nonresidential support training and intervention in activities that include:~~

- ~~1. Self care;~~
- ~~2. Daily living skills;~~
- ~~3. Communication;~~
- ~~4. Behavior support;~~
- ~~5. Community living;~~
- ~~6. Social skills;~~
- ~~7. Participation in community activities;~~
- ~~8. Utilization of community resources; or~~
- ~~9. Vocational training;~~

~~(j) Supported employment for a participating individual if the services are not otherwise available under a program funded by 29 USC 701 et seq. or PL 94-142;~~

~~(k) Respite care provided for the temporary relief of the staff or family or for the safety of the individual;~~

~~(l) Wellness monitoring providing one (1) visit per month by a registered nurse to:~~

~~1. Evaluate the condition of an individual at risk of medical complications; or~~

~~2. Refer the individual to the appropriate medical services;~~

~~(m) Specialized medical equipment and supplies; or~~

~~(n) Personal emergency response systems.~~

~~(2) Room and board shall be excluded from coverage.~~

~~(3) Special education and related services that are required to be provided by the public school system under 20 USC 1400 et seq. shall be excluded from coverage.~~

Section 5. Covered Services. (1) An SCL waiver service shall:

(a) Be prior authorized by the department;

(b) Be provided pursuant to the ISP; and

(c) Not be provided to a minor child by a parent or stepparent or to an adult by that individual's spouse.

(2) The following services provided to an SCL recipient by an SCL waiver provider who meets the requirements in Section 2 of this administrative regulation shall be covered by the department:

(a) Support coordination which shall include coordinating, planning, and monitoring supports for an SCL recipient and be provided by a support coordinator who shall:

1. Have monthly, face-to-face contact with an SCL recipient to arrange activities;

2. Initiate, coordinate, implement, and monitor the assessment, evaluation, intake and eligibility process;

3. Assist an SCL recipient in the identifying, coordinating, updating, and monitoring of the ISP;

4. Develop, coordinate, update, and monitor the ISP;

5. Disseminate ISP, crisis prevention plan, assessment, and other appropriate documents to each of the service providers;

6. Assist an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;

7. Provide an SCL recipient and chosen SCL waiver providers twenty-four (24) hour telephone access to a support coordination staff person;

8. Support an SCL recipient in assuming greater responsibility for the coordination of services;

9. Establish a Human Rights Committee which shall include a minimum of three (3) individuals that shall include an:

a. SCL recipient;

b. Individual not affiliated with the SCL waiver provider; and

c. Individual who has knowledge and experience in rights issues; and

10. Establish a BIC;

(b) A community habilitation service which shall be furnished in the community or a nonresidential setting and enable an SCL recipient to:

1. Participate in a community project as a volunteer in a typically unpaid position;

2. Access and utilize community resources; and

3. Utilize a variety of assistance and training to interact with the environment through expressive services which shall be based on goals and be therapeutic rather than diversional;

(c) A supported employment service which shall be intensive, ongoing support for an SCL recipient to maintain paid employment in an environment in which individuals without disabilities are employed and shall:

1. Not be available under a program funded by either the Rehabilitation Act of 1973 (29 USC Chapter 16) or PL 99-457 (34 CFR Subtitle B, Chapter III), proof of which shall be documented in the individual's file; and

2. Not include work performed directly for the supported employment provider;

(d) Prevocational service aimed at preparing an SCL recipient for paid or unpaid employment;

(e) A residential support service which shall:

1. Be twenty-four (24) hour support promoting integration into the community for an SCL recipient residing in alternative living arrangements and shall include:

a. A staffed residence which shall be in a home rented or owned by the provider agency;

b. A group home which shall be licensed in accordance with 902 KAR 20:078;

c. A family home which shall not have greater than three (3) individuals who are not family members living in the home; or

d. An adult foster care home which shall not have greater than three (3) individuals age eighteen (18) and over who are not family members living in the home; and

2. Provide everyday supports which shall include:

a. Assistance;

b. Prompting;

c. Observing or guiding;

d. Activity training;

e. Laundry;

f. Routine household care and maintenance;

g. Activities of daily living;



- h. Shopping;
- i. Money management;
- j. Medication management;
- k. Socialization;
- l. Relationship building;
- m. Leisure choices; and
- n. Participation in generic community activities;
- (f) A community living supports service which shall:
  1. Facilitate independence and promote integration into the community for an SCL recipient residing in his home;
  2. Provide supports which shall not be diversional in nature and shall include:
    - a. Assistance;
    - b. Activity training;
    - c. Laundry;
    - d. Routine household care and maintenance;
    - e. Activities of daily living;
    - f. Personal hygiene;
    - g. Shopping;
    - h. Use of money;
    - i. Socialization;
    - j. Relationship building;
    - k. Leisure choices;
    - l. Participation in generic community activities; and
    - m. therapeutic goals;
  3. Not be a substitute for twenty-four (24) hour care;
  4. Not be a substitute for community habilitation; and
  5. Not be provided at a community habilitation site;
- (g) A behavior support which shall include systematic application of techniques and methods to influence or change a behavior in a desired way and shall:
  1. Include an evaluation of an SCL recipient's behavior to develop a plan by a behavior specialist;
  2. Be implemented by the provider staff in other program areas that include relevant environments and activities; and
  3. Be monitored and revised as necessary to ensure desired outcomes;
- (h) A psychological service which shall:
  1. Include psychological testing administered by a psychologist for a dually diagnosed SCL recipient to coordinate treatment for mental illness and psychological conditions in which behavior modification is not sufficient to meet the need of the SCL recipient; and
  2. Be incorporated into the ISP with input from a psychologist for the development of program-wide support and may be administered on site;
- (i) Occupational therapy which shall provide assistance to the physician in the evaluation of an SCL recipient's level of functioning and be provided by an occupational therapist;
- (j) Physical therapy which shall be assistance to the physician in the evaluation of an SCL recipient by a physical therapist applying muscle, joint, and functional ability tests and treating an SCL recipient to relieve pain, develop or restore function, and maintain maximum physical performance and utilize physical means;
- (k) Speech therapy which shall include an evaluation, determination, and recommendation of appropriate supports for an SCL recipient with a speech or language disorder by a speech therapist;
- (l) A respite service which shall be furnished in a variety of settings on a short-term basis due to absence or need for relief of an individual providing care to an SCL recipient unable to administer self-care that resides in a family home, adult foster care home, or his own home and shall be limited to 1440 hours per calendar year; and
- (m) Specialized medical equipment and supplies which shall:
  1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies which shall enable an SCL recipient to increase ability to perform daily living activities, perceive, control or communicate with the environment;
  2. Be ordered by a physician and submitted on a MAP-95;
  3. Be equipment necessary to the proper functioning of specialized items;
  4. Not be available through the department's durable medical equipment, vision, hearing, or dental programs; and
  5. Meet applicable standards of manufacture, design and installation. ~~(Prior Authorization for Services. (1) The department shall prior authorize an SCL service to ensure that:~~

- (a) Client status is met;
- (b) There are adequate services for the needs of the individual; and
- (c) The services do not exceed the cost of the appropriate level of institutional care.

(2) An individual who is eligible for SCL services shall be given the choice of SCL services or traditional intermediate care facility services for persons with mental retardation or developmental disabilities.]

Section 6. SCL Waiting List. [Using the procedures established in the Department for Medicaid Services Supports for Community Living Manual, which is incorporated by reference, an individual may be placed on a waiting list maintained by the department. The main components of the SCL waiting list process shall be as follows:]

(1) A statewide waiting list of individuals applying for SCL services shall be maintained by the department for each regional community mental health mental retardation services geographic region.

(2) [Application.] An individual shall be placed on the SCL waiting list, and allocated funding based upon his region of residence in accordance with KRS 205.6317(3) and (4).

(3) In order to be placed on the SCL waiting list, an individual shall submit to the department, a completed MAP-620 Application for Supports for Community Living MR/DD Services, including a signature from a physician or a QMRP indicating medical necessity. A resident in an ICF/MR seeking SCL services shall be placed on the SCL waiting list:

- (a) Based upon region of origin; and
- (b) Effective on the date of admission to the ICF/MR but not prior to September 22, 1995. ~~[upon receipt of a completed application for supports for community living services.]~~

(4) [(2) SCL waiting list placement.

(a) The order of placement on the SCL waiting list shall be determined chronologically by date of receipt of the application by the department, unless an emergency situation exists and persists through the date of the allocation of the SCL funding, which meets specified criteria as follows:

(a) Death of the historic primary care provider that threatens the health, safety, and welfare of the individual;

(b) Verifiable loss of the historic primary care provider due to incapacitation or abandonment that threatens the health, safety, and welfare of the individual; or

(c) Attainment of the age of twenty (20) years and six (6) months, and in the custody of the DCBS. ~~1. Death or loss of the immediate care provider;~~

~~2. Emergency hospitalization of the immediate care provider; or~~

~~3. Other circumstances relating to the situation of the individual or caregiver to be considered by the department on a case-by-case basis.]~~

(5) [(b)] If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list.

(6) [(a)] A written notification of the date and placement on the SCL waiting list shall be mailed to the individual or his legal representative and support coordination provider if identified.

(7) [(3) Maintenance of the SCL waiting list.] The department shall, at least annually, update the SCL waiting list. An [The] individual on the SCL waiting list or his legal representative and his [the] support coordination provider shall be contacted in writing to verify the accuracy of his [the] data on the SCL waiting list and to verify his [the] continued desire to pursue placement in the SCL Program. The requested data shall be received by the department within thirty (30) days from the date of the letter, ~~excluding holidays and weekends.~~

(8) [(4) Criteria for removal from the SCL waiting list.] The removal of an individual from the SCL waiting list shall not prevent the submittal of a new application at a later date for the individual.

(a) The criteria for removal from the SCL waiting list shall be:

1. After a documented attempt, the department is unable to locate the individual or his legal representative;

2. SCL placement for services is offered and the individual or his legal representative refuses the offer of placement or does not, without good cause, complete the application process with the department within sixty (60) days of the placement allocation date; or

3. The individual is deceased.

(b) If an ~~the~~ individual is removed from the SCL waiting list, written notification shall be mailed by the department to the individual or his legal representative and the SCL coordination provider.

Section 7. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision relating to the application of this regulation which impacts participation of or reimbursement to an SCL provider shall be in accordance with 907 KAR 1:671. ~~[A decision to terminate an individual or to reallocate placement subject to appeal shall not be final until an order is issued in accordance with 907 KAR 1:563.]~~

Section 8. Incorporation by Reference. (1) "Supports for Community Living Manual", Department for Medicaid Services, April 2002 ~~[March 1998]~~ Edition, is incorporated by reference.

(2) This material ~~[(4)]~~ may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: April 8, 2002

FILED WITH LRC: April 16, 2002 at 4 p.m.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Teresa Goodrich or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes supports for community living (SCL) covered services, coverage provisions, and provider qualifications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define SCL covered services, recipient criteria, and provider qualifications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Establishing covered SCL services, coverage provisions, and provider qualifications falls within the jurisdiction of KRS 194A.030(3) and 194A.050(1) which grant the Department for Medicaid Services (DMS) and the Cabinet for Health Services the authority to promulgate administrative regulations on the subject of SCL services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will, in accordance with the authorizing statutes, establish SCL covered services, coverage provisions, and provider qualifications.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation revises the personnel qualifications of an SCL provider's executive director position with the addition of one year of administrative responsibility in an organization which served individuals with mental retardation or a developmental disability.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the continued safety and welfare of the SCL recipients through the assurance that the executive director of the provider agency shall have administrative experience with an organization that served individuals with mental retardation or a developmental disability.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to the administrative regulation revise the personnel qualifications of an SCL waiver provider's executive director position. Provider qualifications fall within the jurisdiction of KRS 194A.030(3) and 194A.050(1) which grant DMS and the Cabinet for Health Services the authority to promulgate administrative regulations on the subject of SCL services.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that an agency's executive director has the appropriate administrative experience to manage a provider agency participating in the SCL Waiver Program. Provider qualifications fall within the jurisdiction of KRS 194A.030(3) and 194A.050(1) which grant DMS and the Cabinet for Health Services the authority to promulgate administrative regulations on the subject of SCL services.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendments to this administrative regulation will affect all SCL waiver providers and SCL recipients.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: DMS estimates that SCL recipients will be beneficially impacted by the implementation of this administrative regulation because the revised personnel qualifications of an SCL waiver provider's executive director position will ensure their safety and welfare. The impact will benefit SCL waiver providers through increased quality assurance in providing services to the SCL recipients.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: This administrative regulation establishes provisions related to SCL service coverage rather than SCL reimbursement. Reimbursement for SCL services is established in 907 KAR 1:155. Implementing the amendment to this administrative regulation will not have a fiscal impact on 907 KAR 1:155 for SFY 2002.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation establishes provisions related to SCL service coverage rather than SCL reimbursement. SCL reimbursement is established in 907 KAR 1:155. Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are the funding sources to be used to implement and enforce 907 KAR 1:155.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding are necessary to implement the amendments to this administrative regulation as funding is included in the enacted budget.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fee.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.



ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee

DEPARTMENT OF STATE  
Kentucky Registry of Election Finance  
(As Amended at ARRS, May 14, 2002)

32 KAR 2:220. Electronic reporting file format and test file compliance procedure.

RELATES TO: KRS 121.015(13), 121.120(6), 121.180, 121A.020(5)

STATUTORY AUTHORITY: KRS 121.120(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(6)(a) ~~as amended by the General Assembly in regular session in 2000, effective July 15, 2000,~~ requires the Kentucky Registry of Election Finance ~~registry~~ to promulgate administrative regulations providing "a nonproprietary standardized format or formats, using industry standards, for the transmission of data required under this chapter or KRS Chapter 121A". Further, KRS 121.120(6)(b) requires the registry to "accept test files from software vendors and persons wishing to file reports electronically" to determine whether the software and data format submitted complies with the registry's file format. ~~[It is necessary to promulgate]~~ This administrative regulation ~~establishes [to provide]~~ a data file format for electronic reporting, as defined by KRS 121.015(13), and ~~[to establish]~~ a procedure for the submission of test files.

Section 1. Electronic Reporting Data Transmission Format. The approved format for the electronic reporting of election finance statements required under KRS Chapters 121 and 121A shall be the Electronic Reporting Data Transmission Format, 2002 Edition.

Section 2. Submission of Test Files for Compliance. (1) A vendor of filer-side software or a person wishing to use vendor filer-side software for the purpose of electronic reporting shall submit test files for a compliance determination by the registry in the manner described by this section. The requesting vendor or person shall complete all of the following:

(a) Address the request for a compliance determination in writing to the Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601.

(b) Submit a cover letter addressed to the executive director, which includes the following information:

1. A brief description of the software, including the filer types for whom the software is designed;
2. A description of the support offered to filers by the manufacturer or vendor of the software;
3. A statement describing whether the software is capable of executing in a client server environment;
4. The cost of the software, including the cost of any technical support offered by the manufacturer or vendor of the software; and
5. The name, address, and telephone number for a contact person~~[,]~~ who can provide any additional technical information on behalf of the vendor or person.

(c) Submit an evaluation copy of the existing software, including sample data for testing each of the five (5) file layouts described in Section 1 of this administrative regulation.

(2) Electronic campaign finance data prepared using software not determined to comply with the format specified in Section 1 of this administrative regulation shall not constitute a properly filed election finance statement.

(3) There shall be made available an Electronic Reporting Software Vendor List, Edition 2002, which shall list vendor filer-side software products that have been determined by the registry to comply with the format for electronic reporting specified in Section 1 of this administrative regulation.

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

(a) "The Electronic Reporting Data Transmission Format, 2002 Edition"; and

(b) "The Electronic Reporting Software Vendor List, 2002 Edition".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or at:

<http://www.state.ky.us/agencies/kref/krefhome.htm>.

JOHN L. SMITH, Chair

APPROVED BY AGENCY: March 12, 2002

FILED WITH LRC: March 14, 2002 at 2 p.m.

KENTUCKY BOARD OF MEDICAL LICENSURE  
(As Amended at ARRS, May 14, 2002)

201 KAR 9:310. Continuing medical education.

RELATES TO: KRS 214.610, 214.615, 214.620, 311.565(1)(b), 311.601

STATUTORY AUTHORITY: KRS 311.565(1)(a), (b), 311.601(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.601(1) authorizes the board to promulgate an administrative regulation that establishes requirements to ensure the continuing professional competency of licensees. This administrative regulation establishes continuing medical education requirements. ~~[311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the administrative regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this administrative regulation is to establish continuing medical education requirements.]~~

Section 1. Continuing Medical Education. ~~[After January 1, 1994,]~~ A licensee shall submit, with his annual licensure renewal form, verification of satisfactory completion of a program of continuing medical education.

Section 2. In order to meet the continuing medical education requirements, a licensee shall ~~[be as follows]:~~

(1) Submit evidence that thirty (30) of the sixty (60) hours shall have been certified in Category I by an organization accredited by the:

- (a) Accreditation Council on Continuing Medical Education; or
- (b) The American Osteopathic Association;

(2)(a) Submit evidence that the licensee has received the American Medical Association's "physician recognition award", or the American Osteopathic Association's "osteopathic physicians' recognition award"; and

(b) Award is in effect at the time a license is renewed;

(3) Submit verification that the:

(a) Licensee has completed continuing medical education requirements of any specialty organization which ~~is [are]~~ recognized by the AMA or AOA as at least equivalent to their recognition awards; and

(b) Certification is in effect at the time a license is renewed; or

(4)~~(a)~~ Submit verification that the licensee is in, or has been in, an approved postgraduate training program.

(5) ~~(b)~~ Each year of postgraduate training shall be equivalent to fifty (50) hours of continuing medical education.

Section 3. Required Hours of Continuing Education. (1) For each three (3) year continuing education cycle, a licensee shall complete:

JUSTICE CABINET  
Department of Corrections  
Division of Adult Institutions  
(As Amended at ARRS, May 14, 2002)

501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439  
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Western Kentucky Correctional Complex.

Section 1. Incorporation by Reference. (1) Western Kentucky Correctional Complex policies and procedures, May 14 [March 12], 2002 [October 15, 2004], are incorporated by reference. Western Kentucky Correctional Complex policies and procedures include:

WKCC 01-02-01	Public Information and Media Communication
WKCC 01-08-01	Smoking Policy
WKCC 02-00-01	Fiscal Management Audits <del>[(Added 10/15/01)]</del>
WKCC 02-00-04	Monetary Receipts During Nonbusiness Hours <del>[(Amended 10/15/01)]</del>
WKCC 02-00-06	Purchasing Procedures <del>[(Amended 10/15/01)]</del>
WKCC 02-01-01	Inmate Funds <del>[(Amended 10/15/01)]</del>
WKCC 02-01-02	Inmate Canteen <del>[(Amended 10/15/01)]</del>
WKCC 02-02-01	Agency Funds and Accounting Procedures <del>[(Amended 10/15/01)]</del>
WKCC 02-05-01	Fiscal Management Organization and Budget Preparation <del>[(Added 10/15/01)]</del>
WKCC 02-08-01	Property Receipt and Inventory Procedures <del>[(Amended 10/15/01)]</del>
WKCC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings <del>[(Amended 10/15/01)]</del>
WKCC 04-02-01	Employee Training and Development <del>[(Amended 10/15/01)]</del>
WKCC 05-01-01	Research, Consultants, and Student Interns
WKCC 06-00-01	Offender Records and Information Access <del>[(Amended 10/15/01)]</del>
WKCC 06-00-02	Administrative Process for Inmate Court Orders <del>[(Amended 10/15/01)]</del>
WKCC 07-00-01	Preventive Maintenance Program <del>[(Added 10/15/01)]</del>
WKCC 07-00-02	Mechanical Equipment Repair and Control of Hazardous Energy <del>[(Added 10/15/01)]</del>
WKCC 10-02-01	Special Management Inmates
WKCC 11-00-01	Food Service General Guidelines <del>[(Added 3/12/02; Amended 5/14/02)]</del>
<del>WKCC 11-00-02</del>	<del>Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements (Deleted 3/12/02)</del>
<del>WKCC 11-00-03</del>	<del>Food Service Inspections, Sanitation, Purchasing, and Storage of Food (Deleted 3/12/02)</del>
<del>WKCC 11-00-04</del>	<del>Food Service Security (Deleted 3/12/02)</del>
<del>WKCC 11-00-05</del>	<del>Food Service General Guidelines (Deleted 3/12/02)</del>
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets <del>[(Amended 3/12/02 and 5/14/02)]</del>
WKCC 12-01-01	Inmate Clothing <del>[(Amended 10/15/01)]</del>
WKCC 13-00-01	Special Health Programs <del>[(Amended 10/15/01)]</del>
WKCC 13-01-01	Use of Pharmaceutical Products
WKCC 13-02-01	Health Care Services
WKCC 14-04-01	Legal Services Program <del>[(Amended 10/15/01)]</del>
WKCC 15-01-01	Hair and Grooming Standards <del>[(Amended 10/15/01)]</del>
WKCC 16-01-01	Visiting Policy and Procedures <del>[(Amended 10/15/01)]</del>

(a) A total of sixty (60) hours of continuing medical education, if his license has been renewed for each year of a continuing medical education cycle;

(b) If his license has not been renewed for each year of a continuing medical education cycle, a licensee shall complete twenty (20) hours of continuing medical education for each year for which his license has been renewed.

(c) A licensee whose initial licensure was granted the first year of the continuing education cycle for which verification is submitted shall complete ~~[(completion of)]~~ sixty (60) hours of continuing medical education before the end of the cycle;

(d) A licensee whose initial licensure was granted the second year of the continuing education cycle for which verification is submitted shall complete ~~[(completion of)]~~ forty (40) hours of continuing medical education before the end of the cycle;

(e) A licensee whose initial licensure was granted the third year of the continuing education cycle for which verification is submitted shall complete ~~[(completion of)]~~ twenty (20) hours of continuing medical education before the end of the cycle.

(2) Upon renewal of licensure following the end of a three (3) year continuing education cycle, a licensee shall certify that he has met the continuing medical education requirements for the cycle as provided by this section.

(3) Verification of completion of continuing medical education requirements shall be submitted upon request by the board.

Section 4. The board may grant an extension of time to a physician who for sufficient cause has not yet received continuing medical education certification.

Section 5. During each ten (10) year period of their practice, each licensee shall complete a minimum of two (2) hours of continuing medical education in HIV/AIDS courses approved pursuant to KRS 214.610, 214.615 and 214.620. [A minimum of two (2) of the continuing medical education hours shall be in HIV/AIDS courses approved by the Cabinet for Human Resources pursuant to 201 KAR 2:160.]

Section 6. The board may randomly require physicians submitting certification of continuing medical education to demonstrate satisfactory completion of the continuing medical education requirements stated in his certification.

Section 7. (1) A licensee shall be fined a minimum of \$200 dollars, if he fails to:

(a) Timely complete the continuing medical education requirements; and

(b) Obtain an extension of time for completion of the continuing medical education requirements.

(2)(a) A licensee subject to subsection (1) of this section shall be granted a period of six (6) months to come into compliance.

(b) If a licensee has not completed the continuing medical education requirements within the six (6) month period established by this subsection, his license shall:

1. Be immediately suspended; and

2. Remain suspended until he has submitted verifiable evidence that he has completed the continuing education requirements.

Section 8. A waiver of the requirements established by the provisions of this administrative regulation shall not be granted.

Section 9. Incorporation by Reference. (1) "Continuing Medical Education Certification Form" 3/97 is incorporated by reference.

(2) This form may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, 8 a.m. to 4:30 p.m., Monday through Friday.

DANNY M. CLARK, President

APPROVED BY AGENCY: March 6, 2002

FILED WITH LRC: March 7, 2002 at 10 a.m.

VOLUME 28, NUMBER 12 – JUNE 1, 2002

WKCC 16-02-01	<del>40/45/01</del> Inmate Correspondence (Amended 3/12/02 and 5/14/02)
WKCC 16-03-01	Inmate Access to Telephones (Amended 3/12/02)
WKCC 16-04-01	Inmate Packages (Amended 3/12/02 and 5/14/02)
WKCC 17-01-01	Inmate Personal Property <del>((Amended 10/15/01))</del>
WKCC 17-02-01	Inmate Reception and Orientation (Amended 3/12/02) <del>((Amended 10/15/01))</del>
WKCC 19-04-01	Work and Program Assignments (Added 3/12/02; Amended 5/14/02)
WKCC 19-04-02	Correctional Industries <del>((Added 10/15/01))</del>
WKCC 20-01-01	Education Program (Amended 3/12/02)
WKCC 21-00-01	Library Services (Added 3/12/02; Amended 5/14/02)
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities
WKCC 22-00-02	Inmate Organizations <del>((Amended 10/15/01))</del>
WKCC 23-00-01	Religious Services (Amended 3/12/02 and 5/14/02)
WKCC 24-00-01	Social Services <del>((Amended 10/15/01))</del>
WKCC 25-02-01	Inmate Release Process <del>((Amended 10/15/01))</del>
WKCC 25-03-01	Prerelease Programs <del>((Amended 10/15/01))</del>
WKCC 26-01-01	Volunteer Services Program (Added 3/12/02; Amended 5/14/02)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

VERTNER L. TAYLOR, Commissioner  
APPROVED BY AGENCY: March 5, 2002  
FILED WITH LRC: March 14, 2002 at 3 p.m.

**TRANSPORTATION CABINET**  
Department of Vehicle Regulation  
Division of Motor Carriers  
Office of General Counsel  
(As Amended at ARRS, May 14, 2002)

**601 KAR 1:040. Application for operating authority and registration of motor carriers.**

RELATES TO: KRS Chapter 281, 281.014, 281.615, ~~281.617,~~ 281.618, 281.619, 281.620, 281.625, ~~281.627,~~ 281.637, 281.650, 281.660, 281A.010(8), 49 CFR Part 367

STATUTORY AUTHORITY: KRS 281.600, 281.620, 281.752, 49 CFR Part 367, 49 USC 14501 ~~14504~~

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation describes the application procedure ~~[to follow in applying]~~ for intrastate operating authority in the Commonwealth and the registration procedure for ~~[of]~~ interstate motor carriers operating in Kentucky pursuant to authority granted by the United States Department of Transportation.

Section 1. Kentucky Intrastate Passenger or Household Goods Authority. (1)(a) An application 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, revised April 1999 ~~[effective April 1997];~~

2. Transportation Cabinet form TC 93-11, Application for Operating Authority, Disabled Persons Carrier, revised April 1999 ~~[effective October 1996];~~

3. Transportation Cabinet form TC 93-12, Application for Operating Authority, Bus and Airport Shuttle, revised April 1999 ~~[effective November 1998];~~

4. Transportation Cabinet form TC 93-13, Application for Operating Authority, City Limousine and Taxi, revised April 1999 ~~[effective October 1996];~~ or

5. Transportation Cabinet form TC 93-15, Application for Operating Authority, County Limousine and Taxi, revised April 1999 ~~[effective April 1997].~~

(b) The application shall be accompanied by a filing fee of twenty-five (25) dollars.

(c) All applications and exhibits shall be filed with answers type-written 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 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.

(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 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 for temporary authority shall be made to the Transportation Cabinet by petition.

(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 file ~~[submit]~~ a waiver from each carrier authorized to serve the area sought or any part thereof in the form of ~~[by filing]~~ a letter from each carrier waiving any objection to the temporary grant of authority.

(2) There shall also be filed with the petition a verified statement ~~[verified statements]~~. 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) A statement of when ~~[How soon]~~ the transportation service is needed and the reasons why the need is immediate and urgent ~~[for the time limit];~~

(f) An estimate of how long the need for the transportation service ~~[likely]~~ will continue and a statement that ~~[if]~~ the person making the supporting statement would support a permanent service application;

(g) A 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) A statement of incidents where ~~[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, **an application [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 for approval to transfer a certificate or permit issued by the Transportation Cabinet 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.

(c) All applications and exhibits shall be filed with answers type-written 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 shall be sworn to by the applicant or a responsible official acting for the applicant.

(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 - For-hire Motor Carriers. (1) 49 CFR Part 367 revised October 1, 2001 [1998], 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.

(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.

(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.

(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.

Section 5. Contract Bus Carrier Permit; Intrastate. (1) Each application for authority as an intrastate contract bus carrier shall include two (2) copies of the contract under which the applicant desires to operate.

(2) 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) Reference to a published common carrier tariff shall not be acceptable in defining rates or compensation.

(4) At least one (1) of the contract copies shall have original signatures.

(5) 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)(a) If 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 6. Charter Bus Applications. (1) An application for operating authority as a charter bus operator pursuant to [as defined in] KRS 281A.010 shall be made on form TC 93-20 "Application for Charter Bus Operating Authority".

(2) **In accordance with KRS 281A.010(8)(d), a charter bus shall be considered to be a commercial motor vehicle as defined by KRS 281A.010(8) except that it shall be designed to transport seventeen (17) or more persons, including the driver.** ~~A charter bus shall be a commercial motor vehicle as defined in KRS 281A.010(8)(b).~~

(3) Each application shall include a filing fee of twenty-five (25) dollars.

(4) ~~(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.

(5) ~~(4)~~ The applicant shall be required to file evidence of insurance as required in KRS 281.655(4).

(6) ~~(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. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Transportation Cabinet form TC 93-10, Application for Operating Authority, Household Goods, revised April 1999 [effective April 1997];

(b) Transportation Cabinet form TC 93-11, Application for Operating Authority, Disabled Persons Carrier, revised April 1999 [effective October 1996];

(c) Transportation Cabinet form TC 93-12, Application for Operating Authority, Bus and Airport Shuttle, revised April 1999 [effective November 1998];

(d) Transportation Cabinet form TC 93-13, Application for Operating Authority, City Limousine and Taxi, revised April 1999 [effective October 1996];

(e) Transportation Cabinet form TC 93-15, Application for Operating Authority, County Limousine and Taxi, revised April 1999 [effective April 1997];

(f) "Application for Charter Bus Operating Authority", form TC 93-20, revised December 2001 [November 1998 edition];

(g) "Procedure Manual for Single State Registration System", July 12, 1993 edition; and

(h) 49 CFR Part 367 revised October 1, 2001 [1998], prescribes standards for registration with states.

(2) The material [Copies of the material incorporated] in subsection (1)(a) through (e) and (h) ~~(g)~~ of this section may be inspected, copied or obtained, subject to applicable copyright law, at the Office of General Counsel, Hearings Section, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. [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)(f) and (g) of this section may be inspected, copied or obtained, subject to applicable copyright law, at the Division of Motor Carriers, Third Floor of the State Office Building, 501 East High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. [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) 564-2548.]

ber is (502) 564-4540.]

DALE SHROUT, Commissioner  
JAMES C. CODELL, III, Secretary  
HOLLAND B. SPADE, Office of General Counsel  
APPROVED BY AGENCY: December 13, 2001  
FILED WITH LRC: December 14, 2001 at 8 a.m.

**EDUCATION PROFESSIONAL STANDARDS BOARD**  
(As Amended at ARRS, May 14, 2002)

**704 KAR 20:210. Substitute teachers and emergency school personnel.**

RELATES TO: KRS 161.020, 161.028(1)(a), (f) ~~[(e)]~~, 161.030(1), (9), 161.100

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), (f) ~~[(e)]~~, 161.030(1), (9), 161.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028, and 161.030 require ~~[requires]~~ that a teacher and other professional school personnel hold a certificate of legal qualifications ~~[qualification]~~ for the respective position issued by the Education Professional Standards Board. KRS 161.100 provides for the issuance of an emergency certificate. This administrative regulation establishes a Certificate for Substitute Teaching, ~~[and establishes]~~ the priority selection process for employing a substitute teacher, and the Emergency Noncertified School Personnel Program ~~[status of this certificate in comparison with a regular certificate and an emergency certificate]~~.

Section 1. (1) The Certificate for Substitute Teaching shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant who:

(a) Holds a valid statement of eligibility for a Kentucky teaching certificate; or

(b) Has previously held a Kentucky certificate for classroom teaching for which the completion of a four (4) year program of teacher preparation and a bachelor's degree were required.

(2) The Certificate for Substitute Teaching shall be issued initially for a duration period of five (5) years and may be reissued or renewed upon recommendation of the employing school district superintendent.

(3) The Certificate for Substitute Teaching shall:

(a) Be valid for substitute teaching; and

(b) Not be valid:

1. For continuous part-time employment for classroom teaching; or

2. As a permanent replacement for a teacher of record for the remainder of the school year.

Section 2. To employ a substitute teacher during the temporary absence of the teacher of record for a position, priority in selection and employment shall be given in accordance with the following order:

(1) A teacher who holds appropriate regular certification corresponding to the grade level of the teaching assignment;

(2) A teacher who holds regular certification for classroom teaching at any grade level;

(3) A teacher who holds the Certificate for Substitute Teaching;

(4) Except as provided in subsection (5) of this section, a person certified on an emergency basis for substitute teaching pursuant to 704 KAR 20:210, who shall be called according to the following descending order relating to the amount of college hours completed:

(a) A Bachelor's degree;

(b) At least ninety-six (96) semester hours of college credit;

(c) From sixty-four (64) to ninety-five (95) semester hours of college credit;

(5) A person certified on an emergency basis for substitute teaching in a health, technical, or industrial occupation with a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of a passing score on the General Education Development

Test.

Section 3. If a district is unable to employ a substitute teacher using the priority selection process established in Section 2 of this administrative regulation, a district may utilize a person through the Emergency Noncertified School Personnel Program established by the Education Professional Standards Board. A district seeking participation in this program shall apply to and receive approval from the Education Professional Standards Board on an annual basis.

(1) A district shall submit a written letter of application for participation in the Emergency Noncertified School Personnel Program ~~[by August 1 of the school year in which the district is requesting participation in the program]~~. A district may make application at any time during the school year. The application letter shall be reviewed for approval by the Education Professional Standards Board based upon the following documented components:

(a) The number of teaching days not filled with an appropriately certified teacher or appropriately certified emergency substitute in the preceding school year;

(b) The extent and anticipated usage of emergency school personnel;

(c) A plan to eliminate the need for emergency school personnel in the future;

(d) The steps taken by the district to recruit and retain emergency certified personnel;

(e) The recruitment of persons with a high school diploma or its equivalent as determined by evidence of a passing score on the General Education Development Test, age twenty-five (25) or over, except an individual enrolled in an approved teacher education program who may be less than twenty-five (25) years old;

(f) Recruitment of ~~[(a)]~~ parents or other paraprofessionals assigned to the school;

(g) A detailed outline of a minimum eighteen (18) clock hour orientation program including emphasis on student safety, district policies, and procedures; and

(h) An outline of the district screening process, including the required criminal record and reference check.

(2) Upon Education Professional Standards Board approval of the ~~[one (1) year approval]~~ plan for the school year, the district shall:

(a) Submit a list, by name, Social Security number, and school, of personnel meeting the requirements established in subsection (1) of this section;

(b) ~~[Utilize personnel in the school for which approval has been granted]~~;

~~[(c)]~~ Submit a quarterly report to the Education Professional Standards Board identifying the number of days personnel were utilized under this ~~[one (1) year approval]~~ plan; ~~[and]~~

(c) ~~[(d)]~~ Submit a summary ~~[year-end]~~ evaluation of the program at the end of the school year for which approval was received from the Education Professional Standards Board; and ~~[one (1) year approval plan for emergency school personnel]~~;

(d) 1. Utilize emergency school personnel in a single school for which the staff member has been approved and assigned by the district; or

2. If the staff member participated in the district's Emergency Noncertified School Personnel Program the previous school year, the district may choose to utilize the staff member in more than one (1) school in the district.

(3) A district that was approved by the Education Professional Standards Board to operate an Emergency Noncertified School Personnel Program the preceding year may file Form TC-EN ~~[a written letter of application]~~ requesting renewal for continuation of the program. Renewal shall be contingent upon:

(a) Demonstration of the continued need for the program; and

(b) ~~[(a)]~~ Successful evaluation of the previous year's program pursuant to ~~[the application letter and]~~ reporting requirements of this administrative regulation.

Section 4. Incorporation by Reference. (1) Form TC-EN, May 2002, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 1024 Capital Center Drive, Suite 225, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair  
APPROVED BY AGENCY: March 15, 2002  
FILED WITH LRC: March 15, 2002 at 10 a.m.

**EDUCATION PROFESSIONAL STANDARDS BOARD**  
(As Amended at ARRS, May 14, 2002)

**704 KAR 20:770. Probationary certificate for middle school teachers.**

RELATES TO: KRS 161.020, 161.028, 161.030  
STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028 requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. This administrative regulation establishes the probationary certificate for middle school teachers and the requirements for issuance and renewal of this certificate.

Section 1. Definition. "Qualified teacher" means a teacher who holds the appropriate certification as a middle school teacher unless the superintendent of the employing school district has documented evidence that the teacher is unsuitable for appointment.

Section 2. Requirements for Issuance of the Probationary Certificate for Middle School Teachers, Grades Five (5) Through Nine (9). (1) If a qualified teacher is not available for the position of middle school teacher at the grade level and content area necessary as attested by the local superintendent, the superintendent may request a one (1) year probationary certificate for a teacher who:

(a) Holds at least a valid Kentucky teaching statement of eligibility or Kentucky teaching certificate issued by the Education Professional Standards Board;

(b)1. Has a cumulative grade point average of 2.5 on a 4.0 scale; or

2. Has a grade point average of 3.0 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;

(c) Has an offer of employment from a Kentucky school district or accredited nonpublic school in grades five (5) through nine (9) in a content area or areas;

(d) Has enrolled in an approved middle school preparation program for the content area or areas for which certification is sought; and

(e) Has successfully completed at least twelve (12) semester credit hours of content coursework in each content area for which certification is sought.

(2) Application shall be made on Form TC-MG.

(3) **Compliance with** the requirements established in subsection (1)(d) and (e) of this section shall be verified by submission of a curriculum contract completed by the teacher education institution with an approved middle school preparation program in the content area or areas for which certification is sought.

(4)(a) Upon completion of all requirements **established in this section** [in Section 2 of this administrative regulation], the applicant shall be issued a probationary certificate for middle school teachers in the content area or areas valid for one (1) year.

(b) The probationary certificate shall be valid for teaching grades five (5) through nine (9) in the content area or areas indicated on the face of the certificate.

Section 3. Requirements for Renewal of a Probationary Certificate for Middle School Teachers, Grades Five (5) Through Nine (9). (1) The first renewal of the probationary certificate for middle school teachers shall be for one (1) year based upon successful completion of the following requirements:

(a) Evidence of employment in a Kentucky school district or nonpublic school in grades five (5) through nine (9) in the content area or areas indicated on the initial probationary certificate;

(b) Completion of at least six (6) semester hours or its equivalent from the approved middle school preparation program as indicated on the teacher's curriculum contract; and

(c) Successful completion of the Kentucky Teacher Internship Program established in 704 KAR 20:690. Teachers who have successfully completed the Kentucky Teacher Internship Program prior to issuance of the initial probationary certificate or who are not required to complete the internship program under the requirements for out-of-state teachers established in KRS 161.030(5) shall not be required to complete the internship program again while serving on the probationary certificate.

(2) Subsequent one (1) year renewals of the probationary certificate for middle school teachers shall require at least six (6) semester hours or its equivalent of additional credit from the approved middle school preparation program as indicated on the teacher's curriculum contract.

(3) Upon successful completion of all program requirements for the approved middle school preparation program, including successful completion of all required assessments established in 704 KAR 20:305, a professional certificate for teaching middle school established in 704 KAR 20:670 and valid for five (5) years shall be issued.

(4) Program requirements for completion of the middle school preparation program while serving on the probationary certificate for middle school teachers shall not include student teaching.

Section 4. Incorporation by Reference. (1) Form TC-MG, rev. 7/2002, Education Professional Standards Board, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 1024 Capital Center Drive, Suite 225, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

JOE EARLY, Chair  
APPROVED BY AGENCY: March 15, 2002  
FILED WITH LRC: March 15, 2002 at 10 a.m.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Kentucky Racing Commission**  
(As Amended at ARRS, May 14, 2002)

**811 KAR 1:035. Claiming races.**

RELATES TO: KRS 230.215(1), (2), 230.260(1), (3) ~~230.630(1), (3), 230.640~~

STATUTORY AUTHORITY: KRS 230.260  
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 230.215(2) authorizes the commission** to regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate claiming races.

Section 1. (1) ~~Who May Claim.~~ A horse entered in a claiming race may be claimed for its entered price by:

(a) A licensed horse owner who has a horse programmed to start in a pari-mutuel race at that meeting;

(b) ~~[-or-by]~~ A licensed horse owner who has received a claim certificate from the commission; or

(c) ~~[-or-by]~~ Any person who has qualified for a license as a horse owner and who has received a claim certificate from the commission.

(2) ~~[(4)]~~ An authorized agent may claim for a qualified owner.

(3) ~~[(2)]~~ To qualify for a license as an owner, the applicant **shall** ~~[must]~~ have a current United States Trotting Association membership as an owner or membership as an associate-member.

(4) ~~[(3)]~~ Any person seeking to effect a false claim by inducing another to claim a horse for him **shall** ~~[will]~~ be subject to the penalties provided by Section 9 of this administrative regulation.

Section 2. Prohibitions. (1) **A [No]** person shall **not** claim his own horse nor shall he claim a horse trained or driven by him.

(2) **A [No]** person shall **not** claim more than one (1) horse in a race.



(3) A ~~[No]~~ qualified owner or his agent shall not claim a horse for another person.

(4) A ~~[No]~~ owner shall not cause his horse to be claimed directly or indirectly for his own account.

(5) A ~~[No]~~ person shall not offer, or enter into an agreement, to claim or not to claim or attempt to prevent another person from claiming any horse in a claiming race.

(6) A ~~[No]~~ person shall not enter a horse which has a [against which there is] a mortgage, bill of sale, or lien of any kind pending, unless the written consent of the holder is [thereof shall be] filed with the clerk of the course of the track conducting that [such] claiming race.

### Section 3. Claiming Procedure. (1) Owner's credit.

(a) The owner shall have [must have to his] credit with the track giving the race an amount equivalent to the specified claiming price plus the existing Kentucky sales tax and requisite fees for transfer of registration.

(b) By accepting the claim, the racetrack assumes responsibility for payment to the owner of the horse claimed.

(c) The money due for a claimed horse shall [is to] be paid to the owner losing that [said] horse within forty-eight (48) hours (Sundays excepted) by the track, provided that the [said] horse has a current test complying with subsection (14) of this section.

(2) A declaration shall not [Owner's consent,] [No declaration may] be accepted unless written permission of the owner is filed with the race secretary at the time of declaration.

(3) ~~[Program,]~~ The claiming price shall be printed on the program and all claims shall be for the amount so designated and any horse entered in a claiming race may be claimed for the designated amount.

(4) ~~[Claim box,]~~ All claims shall be in writing, sealed and deposited at least fifteen (15) minutes before the time originally scheduled for the race to begin in a locked box provided for this purpose by the Racing Association.

(5) An official shall not open the claim [Opening of claim box,] [No official shall open said] box or give any information on claims filed until after the horses leave the paddock for the post parade. Immediately after the race, the claim box shall be opened and the claim, if any, examined by the judges.

(6) ~~[Multiple claims on same horses,]~~ If ~~[Should]~~ more than one (1) claim is [be] filed for the same horse, the owner shall be determined by lot by the judges.

(7) ~~[Delivery of claimed horse,]~~ A horse claimed shall be delivered immediately by the original owner or his trainer to the successful claimant upon authorization of the presiding judge.

(a) The horse's halter shall [must] accompany the horse.

(b) The horse's shoes shall not be altered or removed [Altering or removing the horse's shoes will be considered a violation of this rule].

(c) The hobble measurements of a claimed horse shall [must] be made available to the successful claimant by the paddock judge.

(8) ~~[Refusal to deliver claimed horse,]~~ Any owner who refuses to deliver a horse legally claimed out of a claiming race shall be suspended together with the horse until delivery is made.

(9) ~~[Vesting of title to claimed horse,]~~ (a) A ~~[Every]~~ horse claimed shall race in all heats or dashes of the event in the interest and for the account of the owner who declared it in the event;

(b) ~~[but]~~ Title to the claimed horse shall be vested in the successful claimant from the time the word "go" is given in the first heat or dash; and

(c) The [and said] successful claimant shall become the owner of the horse whether it be:

1. Alive;
2. Dead;
3. Sound;
4. Unsound; or

5. ~~[alive or dead or sound or unsound, or]~~ Injured during the race or after it.

(d) ~~[provided, however, that]~~ The final vesting of title to a claimed horse shall be [is] subject to the conditions and provisions set forth in this administrative regulation ~~[of subsection (14) of this section].~~

(10) ~~[Affidavit by claimant,]~~ (a) The judges may require any per-

son making a claim for a horse to make a statement by affidavit that he is claiming that [said] horse for his own account or as authorized agent and not for any other person.

(b) Any person willfully making a false statement regarding the claiming process [Any person making such affidavit willfully and falsely] shall be subject to punishment as hereinafter provided.

(11) ~~[Penalty for thirty (30) days,]~~ A claimed horse may start in a race in which the claiming price is less than the price at which it was claimed.

(a) The day claimed shall not count, but the following calendar day shall be the first day and the horse may be entered whenever necessary so that the horse may start on the 31st calendar day following the claim for any claiming price.

(b) If a horse is claimed no right, title or interest therein shall be sold or transferred except in a claiming race for a period of thirty (30) days following the date of claiming.

(c) The claimed ~~[Further, such]~~ horse shall be required to continue to race at the track where claimed for a period of thirty (30) days or the balance of the current racing meeting whichever comes first.

(12) ~~[Return of claimed horse to owner or stable,]~~ A ~~[No]~~ horse claimed out of a claiming race shall not be eligible to start in any race in the name or interest of the previous owner for thirty (30) days, nor shall that [such] horse remain in the same stable, or under the care or management of the first owner or trainer, or anyone connected therewith unless reclaimed out of another claiming race.

(13) ~~[Scratched horse,]~~ A horse scratched from a claiming race is not eligible to be claimed.

(a) The owner or trainer of a horse entered in a subsequent claiming race may request the judge to scratch the horse from that race.

(b) For a period of thirty (30) days, if a horse is [a horse] entered in a claiming race but not in a subsequent claiming race, because of being scratched, that horse [and is scratched,] shall make the next start in a claiming race for a price not higher than the previous claiming price.

(14) Blood sample where horse is claimed.

(a) A ~~[No]~~ blood sample shall not be taken of a horse which has been claimed, if that [said] horse has a valid veterinarian certificate within twelve (12) months of that [said] claim, which certificate includes:

1. The horse's lip tattoo number; and
2. The horse ~~[which]~~ is negative for equine infectious anemia.

(b) In the event that the [said] horse does not have said certificate, then a blood sample shall be taken immediately after the race in the paddock by a licensed veterinarian, and the sample identified as being from a claimed horse shall be forwarded within twenty-four (24) hours to an approved laboratory to be tested for equine infectious anemia.

(c) Pending the receipt of a negative test for equine infectious anemia the monies paid for the claimed horse shall be held by the track.

(d) In the event of a positive test for equine infectious anemia the ownership of the claimed horse shall revert to the owner from whom the horse was claimed and the claiming monies shall be returned to the person or persons who claimed the horse.

(e) The cost of the test is to be borne by the [said] owner and the test may be waived by the claimant at his discretion by so indicating on the claiming slip.

(15)(a) Any filly or mare which has been bred shall not be declared into a claiming race for at least forty-five (45) days following the last breeding of the mare, and thereafter that [such a] mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal.

(b) Any mare pronounced in foal shall not be declared into a claiming race.

(c) ~~(b)~~ If a filly or mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the claimant provided the mare is subjected to a pregnancy examination between the 18th and 21st day of the date of the claim, and is found to be pregnant as a result of that pregnancy examination.

(d) 1. A claimant seeking to void the claim shall [must] file a

petition to void that ~~[bid said]~~ claim with the judges within ten (10) days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the hearing to the parties concerned.

2. If the judges determine that the claim is void ~~[hereunder]~~, the claimant shall receive fifty (50) dollars from the previous owner to cover the cost of the pregnancy examination.

Section 4. Subject to the conditions of Section 3(1)(b) ~~[(44)]~~ of this administrative regulation, the track shall pay the claiming price to the owner at the time the registration certificate is delivered for presentation to the successful claimant and shall withhold and pay the Kentucky sales tax to the Commonwealth as required by law.

Section 5. Claiming Conditions. (1) Whenever possible claiming races shall be written to separate horses five (5) years old and up from young horses and to separate males from females.

(2) If sexes are mixed, mares shall be given a twenty (20) percent minimum price allowance.

(a) ~~[provided, however, that]~~ There shall be no price allowance given to a spayed mare racing in a claiming race.

(b) An allowance for age shall be given.

1. Two (2) year olds shall be given a 100 percent allowance;

2. ~~[ ]~~ Three (3) year olds fifty (50) percent allowance; ~~[ ]~~ and

3. Four (4) year olds twenty-five (25) percent allowance.

(c) Claiming races for two (2) year olds may be conditioned.

(d) Claiming races for three (3) year olds may be conditioned.

(e) The lowest claiming class written at a specific meeting may be conditioned.

Section 6. ~~[Minimum Price]~~ No claiming race shall be offered permitting claims for less than the minimum purse offered at that time during the same racing week.

Section 7. ~~[Determination of Claiming Price]~~ Except as provided in Section 3(11) of this administrative regulation, and except as provided in 811 KAR 1:030, Section 21, no horse owner shall be prohibited from determining the price for which his horse shall be entered.

Section 8. The current registration certificate of all horses entered in claiming races shall ~~[must]~~ be on file with the racing secretary together with a separate claiming authorization form signed by the registered owner or owners and indicating the minimum amount for which the horse may be entered to be claimed. To facilitate transfer of claimed horses the presiding judge may sign the transfer provided that he then ~~sends~~ ~~[send]~~ the registration certificate and claiming authorization to the registrar for transfer.

Section 9. Any person violating any of the provisions of this administrative regulation may ~~[shall]~~ be fined, suspended or expelled.

Section 10. Fraudulent Claim. (1) If the judges determine that the declaration of any horse to a claiming race is fraudulent on the part of the declarer they may void the claim and at the option of the claimant order the horse returned to the person declaring it in.

(2) If the judges determine that any claim of a horse is fraudulent on the part of the person making the claim, they may void the claim and may, at the option of the person declaring it in, return the horse to the person declaring it in.

Section 11. (1) If any stable is ~~[Should any stable be]~~ eliminated by sale or removal from the grounds, the right to claim is void.

(a) ~~[However,]~~ If ~~[When]~~ a stable has been eliminated by claiming, the owner so affected shall have the right to claim a horse during the next thirty (30) racing days at any recognized meeting in this state even though all or a portion of the next thirty (30) racing days take place in the following calendar year.

(b) The owner or trainer of a stable eliminated by claiming shall get a written statement from the director of standardbred racing or the presiding judge ~~[deputy commissioner or his assistant]~~ stating the date and place that the ~~[said]~~ stable was eliminated by claiming.

(c) If that stable acquires ~~[Should such stable acquire]~~ a horse

before availing itself of the privilege, then the privilege shall be void.

(2) If any stable is ~~[Should any stable be]~~ eliminated by fire or other hazards, that ~~[such]~~ stable shall have claiming privilege under the conditions indicated for the stable eliminated by claiming, at the discretion of the deputy commissioner or his assistant.

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: February 28, 2002

FILED WITH LRC: March 8, 2002 at 8 a.m.

# PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (As Amended at ARRS, May 14, 2002)

## 811 KAR 1:125. Pari-mutuel rules.

RELATES TO: KRS 230.210, 230.215, 230.260(1), (2), 230.361(1), (2), (3) ~~[to 230.375]~~, 230.990

STATUTORY AUTHORITY: KRS 230.260(3), (6), 230.361(1),

(2) NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.361(1) requires the commission to promulgate administrative regulations governing mutuel wagering under the pari-mutuel system of wagering. This administrative regulation establishes the requirement for pari-mutuel wagering at race meetings.

Section 1. Equipment. (1) Licensees may use vending machines for the sale of pari-mutuel tickets.

(2) The controls necessary to operate the odds board in the infield, relative to the way the horses finish, (if the finish is being contested, if there is a photo, dead heat, time, or race) shall be located in the judge's stand and controlled only by the presiding judge, or one associate judge designated to do so.

Section 2. Sale of Pari-mutuel Tickets. (1) Only one (1) method of selling pari-mutuel tickets shall be used for the sale of tickets on individual races during any racing day.

(2) Unless prior commission approval has been obtained, pari-mutuel tickets shall not be sold except through regular ticket windows ~~[properly designated by signs showing the type of tickets sold at that particular window]~~.

(3) Book making or betting other than pari-mutuel betting shall be strictly prohibited.

(4) A minor shall not be allowed to bet and a mutuel employee shall not sell or pay a wager to a minor.

(5) All wagering shall stop as soon as the word "go" shall be given by record or by voice of the starter. Vending machines for the sale of pari-mutuel tickets shall be electrically locked by the presiding judge from the judge's stand.

(6) When the sale of pari-mutuel tickets has closed, it shall remain closed until after the race has finished and has been declared official, unless an objection imposes a delay. If an objection imposes a delay, the sale of pari-mutuel tickets for the next succeeding race may be begun without waiting for the race to be declared official.

(7) The method of selling pari-mutuel tickets shall be approved by the commission.

(8) The manager of the pari-mutuel department shall be properly and timely advised by the presiding judge, prior to the beginning of wagering on each race, of the horses that will compete in the race.

(9) If less than five (5) interests qualify horses to start in a race, the manager of the pari-mutuel department may prohibit show wagering on that race.

(10) If less than four (4) interests qualify horses to start in a race, the manager may prohibit both place and show wagering on that race.

(11) If less than three (3) interests qualify horses to start in a race, the manager may prohibit wagering on that race.

(12) The manager may prohibit show or place wagering on any particular horse or entry in any race. The exclusions shall be clearly indicated on the program or score card or announced and horses excluded shall be numbered to indicate that they are not coupled in the field. Horses once excluded from the betting shall remain excluded during the day or race in which they are scheduled to start.

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(13) If more horses representing separate interests are started in a race than the number of post positions on the infield tote board, all horses in excess of a number of interests one (1) less than the total number of post positions on the infield tote board shall be grouped in the betting as the field.

(14) A refund at cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race which has been scratched or withdrawn before the horse has become a starter in the race under the rules, unless the horse is part of an entry, and one (1) or more of the entry starts.

Section 3. Payments. (1) Payments due on all wagers shall be made in conformity with the well established practice of the pari-mutuel system. The practice shall work in dollars and not in the number of tickets. Money wagering on winning tickets shall be returned in full plus the profits. For a winning mutuel pool, each licensee shall redistribute not less than one (1) dollar and ten (10) ten cents on each one (1) dollar wagered. If there is a minus pool, the minimum payoff of each one (1) dollar wagered shall be one (1) dollar and five (5) cents.

(2) At the end of each race, the judges shall advise the manager of the pari-mutuel department by the use of the tote equipment or by telephone of the official placement of the horses, and no payoffs shall be made until the receipt of the notice.

(3) If a horse wins and there is no money wagered on him to win, the win pool shall be apportioned among the holders of ~~the~~ the place tickets on that horse, if any, otherwise among holders of the show tickets.

(4) If no money has been wagered to place on a horse which is placed first or second in a race, the place pool for that race shall be apportioned among the holders of the place tickets on the other horse which was placed first or second.

(5) If no money has been wagered to show on a horse which has placed first, second, or third in a race, the show pool in that race shall be apportioned among the holders of show tickets on the other horses which are placed first, second, or third in that race.

(6) If only two (2) horses finish in any one (1) race, the show pool shall be figured the same as the place pool and monies shall be apportioned to the holders of show tickets on the two (2) finishing horses. If only one (1) horse finishes in any one (1) race, all three (3) pools shall be figured separately as straight pools and all the monies shall be awarded to the ticket holders of the finishing horse. If no horse finishes the race, then the entire pool shall be refunded to all ticket holders.

(7) If two (2) horses finish in a dead heat for first place, the money in the win mutuel pool shall be divided between the two (2) dead-heaters according to their proportionate shares in the pool.

(8) If two (2) horses finish in a dead heat for second place, the division shall be made as follows: There shall be allotted to the pool of the winner of the race one-half (1/2) of the place pool and the two (2) dead-heaters one-half (1/2) each of the remaining half of the place pool.

(9) If two (2) horses coupled in the betting as an entry or the field finish first and second, first and third, or second and third, two-thirds (2/3) of the net show pool shall be allotted to the pool of the entry and the balance one-third (1/3) to the other horse.

(10) If one (1) horse of the entry or the field finishes first or second and the other part of the entry or field finishes in a dead heat for third with another horse, the division of the net show pool shall be as follows: one-half (1/2) of the net show pool shall be allotted to the pool of the entry, one-third (1/3) to the nonentry horse not involved in the dead heat, and one-sixth (1/6) to the nonentry horse finishing in the dead heat.

(11) If the entry or field horses finish first, second, and third, the entire money in each pool shall go to the entry or field tickets, and no other tickets shall participate.

(12) A mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall not be accepted for payment.

(13) Claims for lost pari-mutuel tickets shall not be considered.

(14) If an error is made in calculation resulting in a price being too high, the association shall lose the amount between the proper price and the one paid. If the error in calculation results in a price being too low, the amount between proper price and price paid shall be added to the net pool of the same position in the following race

on the same day or if it is the last race of the day then it shall be added to the net pool of the same position in the same race on the following day. If an error occurs causing underpayment on the last race of the entire racing meeting, the underpayment shall be paid to the Kentucky Revenue Cabinet.

Section 4. Daily Doubles. (1) There shall not be an exchange of daily double tickets after the purchaser has left the sales window.

(2) The daily double shall not be a parlay, and shall not have a connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place, or show pool shown on the totalizer board ~~(the tote betting)~~. All tickets on the daily double shall be calculated in an entirely separate pool. Without prior commission approval, only one (1) daily double shall be permitted during any single program.

(3) All tickets shall be to win (straight) only. Entries and the field shall run as one (1) horse in the daily double. If two (2) or more horses in a race are coupled on the same totalizer ticket, there shall not be refunds, unless all of the horses so coupled are excused before off time.

(4) Selections shall be made of one (1) horse for each of the two (2) races in the daily double by tote program numbers.

(5) If no ticket is sold combining the two (2) winners of the daily double, the pool shall then be apportioned equally between those having tickets including the winner in the first race of the daily double and those having tickets including the winner in the second race of the daily double in the same manner in which a place pool is calculated and distributed.

(6) If no ticket is sold on the winner of the first race of the daily double on any combination, the entire pool shall be apportioned to the holders of tickets on the winner of the second race of the daily double. If no ticket is sold on the winner of the second race of the daily double or any combination, the entire pool shall be apportioned to the holders of tickets on the winner of the first race of the daily double.

(7) If a dead heat to win results in either the first or second race of the daily double, the total pool shall be calculated as a place pool. If there is a dead heat for the winner of the first race of the daily double, the posting of payoff prices shall be made after the winner of the second race of the daily double is official.

(8) If no ticket is sold containing the numbers of either winner on any combination, the pool shall be allotted to those having tickets on horses finishing next to the winners.

(9) If any horse or horses in the first half of the daily double are excused by the judges after the horses have left the paddock for the post, or after the betting on the daily double has been closed, or if any horse or horses in the first half of the daily double are prevented from racing because of failure of the arm or arms of the starting gate to open, the money wagered on any horse or horses excused or prevented from racing shall be deducted from the daily double pool and refunded to the purchaser or purchasers of tickets on the horse or horses excused or prevented from racing.

(10) If a horse is scratched from the second half of the daily double before it becomes a starter in the second half, but after the first half of the daily double has been run, all daily double tickets combining the scratched horse in the second race of the daily double with the actual winner of the first race of the daily double shall be paid a price equivalent to that fraction of the net pool derived by dividing the net pool by the total purchase price of all tickets combining the winner of the first race of the daily double with all horses in the second race of the daily double. The total payoff on all tickets combining the winner of the first race of the daily double with the scratched horse in the second race of the daily double as determined by the method set forth in this rule shall be deducted from the net daily double pool.

(11) The possible payoff prices shall be posted or announced to the public before the start of the last race of the daily double, and as soon as possible after the horses in the race of the last half of the daily double have entered upon the track on the way to the post.

(12) If for any reason the second race of the daily double is cancelled or declared "no race" by the judges after the first daily double race is declared official, then the net daily double pool shall be distributed to wagering combinations which include the horse or betting interest which finished first in the first daily double race.

(13) If a daily double is scheduled to be held, subsections (1) to (12) of this section shall be printed in conspicuous places in the grandstand area and an abbreviated version shall be printed on the day's racing program, and a notice shall be printed on the program as follows: "Retain Your Tickets Until The Result of the Daily Double Has Been Posted."

Section 5. Perfecta Wagering. (1) The perfecta [~~also known as exacta or correctas~~] shall be a contract by the purchaser of a ticket combining two (2) horses in a single race, selecting the two (2) horses that will subsequently finish first and second in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(2) The perfecta shall not be a parlay and shall not have a connection with or relation to the win, place, or show betting and shall be calculated as an entirely separate pool.

(3) If no ticket is sold on the winning combination of a perfecta pool, the net pool shall be distributed equally between holders of tickets selecting the winning horse to finish first. If no ticket is sold on the winning combination of a perfecta pool or tickets selecting the winning horse to finish first, the net pool shall be distributed equally between holders of tickets selecting the second place horse to finish second. ~~[or holders of tickets selecting the second place horse to finish second.]~~

(4) If no ticket is sold that would require distribution of a perfecta pool to a winner pursuant to subsection (3) of this section, the association shall make a complete and full refund of the perfecta pool.

(5) If there is a dead heat between two (2) horses for first place, the net perfecta pool shall be calculated and distributed as a place pool to holders of tickets of the winning combinations. If there is a dead heat between two (2) horses for second place, the perfecta pool shall be figured as a place pool, and the holders of tickets combining the winning horse and the two (2) horses finishing second shall participate in the payoff.

(6) If there is a dead heat for second place, and if no ticket is sold on one (1) of the two (2) winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the perfecta pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.

(7) If two (2) or three (3) horses coupled in an entry or the mutual field finish first and second or first, second, and third, the winning combination shall be the coupled horses and the horse placed immediately behind such entry or field.

Section 6. Quinella Wagering. (1) The quinella shall be a form of a pari-mutuel wagering consisting of selecting the first two (2) horses to finish, irrespective of their place of finish.

(2) The quinella shall not be a parlay and shall not have a connection with or relations to the win, place, or show betting and shall be calculated as an entirely separate pool.

(3) If there is a dead heat between two (2) horses for first place, the combination shall be the winner of the quinella pool. If there is a dead heat between two (2) horses for second place, the quinella pool shall be figured as a place pool, and the holders of tickets combining the winning horse and the two (2) horses finishing second shall participate in the payoff.

(4) If there is a dead heat for second place, and if no ticket is sold on one (1) of the winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the net pool shall be calculated and distributed as a place pool to holders of tickets combining either of the place horses; except, if any tickets combine both horses in the dead heat for place, the net pool shall be calculated and distributed as a win pool to holders of such tickets.

(5) If no ticket is sold on the winning combination of a quinella pool, the net pool shall then be apportioned equally between those having tickets including the horse finishing first and those having tickets including the horse finishing second in the same manner in which a place pool is calculated and distributed.

(6) If no ticket is sold that would require distribution of a quinella pool to a winner as defined in this section, the association shall

make a complete and full refund of the quinella pool.

(7) If a perfecta or quinella is scheduled to be held, each association shall print an abbreviated version of the rules established by this section on the day's racing program.

(8) If two (2) or three (3) horses coupled in an entry or the mutual field finish first and second, or first, second, and third, the winning combination shall be the coupled horses and the horse placed immediately behind such entry or field.

Section 7. Double Perfecta Wagering. (1) The double perfecta shall be a form of pari-mutuel wagering in which the bettor selects the two (2) horses that will finish first and second in each of two (2) consecutive races in the exact order as officially posted.

(2) Double perfecta tickets shall be sold only at double perfecta windows and only from automatic double issue machines.

(3) Each bettor purchasing double perfecta tickets shall designate his two (2) selections as the first two (2) horses to finish in that order in the first of two (2) consecutive races.

(4) After the official declaration of the first two (2) horses to finish in the first race of the double perfecta, each bettor holding a ticket combining the first two (2) horses in the exact order of finish shall, prior to the running of the second double perfecta race, exchange the ticket at the double perfecta window and shall select the two (2) horses to finish in the second race of the double perfecta in the exact order as officially posted. Further money shall not be required of the holder of the ticket to make the exchange.

(5) A double perfecta exchange ticket upon the second race shall not be issued except upon the exchange of the double perfecta ticket from the first race pursuant to subsection (4) of this section. The double perfecta pool obtained from the sales of double perfecta tickets upon the first race shall be held and divided among the winning tickets of the double perfecta exchange tickets, subject to the rules established by this section. Double perfecta windows shall be open to make the exchange only after the first race has been declared official.

(6) If a winning double perfecta ticket from the first race is not presented for exchange within the time provided, the bettor shall forfeit all rights to any distribution or refund unless the second half of the double perfecta is cancelled or declared "no race".

(7) If a horse is scratched in the first race of the double perfecta races, all double perfecta tickets on the scratched horse shall be refunded.

(8) If a horse is scratched in the second race of the double perfecta, after the first race of the double perfecta has been declared official, all exchange tickets combining the scratched horse shall become consolation tickets and shall be paid a price per dollar denomination calculated as follows: the net double perfecta pool (gross pool less commission) shall be divided by the total purchase price of all tickets combining the winners of the first race of the double perfecta. The quotient thus obtained shall be the price to be paid to holders of exchange tickets combining the scratched horse in the second race of the double perfecta. The entire consolation pool (number of eligible tickets times the consolation price) shall be deducted from the net double perfecta pool.

(9) If no double perfecta ticket is sold as a winning combination in the first race of the double perfecta, the double perfecta pool shall be divided among those having tickets including the horse finishing first and those having tickets including the horse finishing second and the distributions shall be calculated and made as a place pool. If that occurs, the double perfecta race shall end and the pool shall be closed for the day.

(10) If no double perfecta exchange ticket is sold on the winning combination, the net pool shall then be apportioned equally between those having tickets including the horse finishing first and those having tickets including the horse finishing second in the same manner by which a place pool is calculated and distributed.

(11) If a double perfecta exchange ticket combines only one (1) of the two (2) winners and no double perfecta exchange ticket combines the other winner, the entire pool shall be distributed as a straight pool to the holders of those tickets.

(12) If no exchange ticket includes either the first or second horse of the second half of the double perfecta, the entire net pool shall be distributed as a straight pool to all holders of exchange tickets.

(13) If there is a dead heat for place in the first race of the double perfecta races, all double perfecta tickets combining the first horse and either of the place horses shall be eligible for exchange for double perfecta exchange tickets.

(14) If there is a dead heat for place in the second race of the double perfecta, the double perfecta pool shall be divided, calculated, and distributed as a place pool to the holders of double perfecta exchange tickets combining the first horse and either of the place horses. If there is a dead heat to place and there are no tickets sold on one (1) combination, then the other combination having the winning horses shall be declared the winner. If no exchange tickets combine the winning horse with either of the place horses in the dead heat, the double perfecta pool shall be calculated and distributed as a win pool to holders of tickets representing any interest in the net pool.

(15) If for any reason the second of the double perfecta races is cancelled or declared "no race", the pool shall be calculated as a straight pool and shall be distributed among the holders of the tickets combining the first two (2) horses of the first race of the double perfecta otherwise eligible for double perfecta exchange tickets and also distributed to holders of the double perfecta exchange tickets.

(16) If there is a dead heat for the winning horse in either of the two (2) consecutive races for the double perfecta, the calculation of the distribution of the double perfecta pool shall be made in the manner in which any ordinary perfecta pool would be made if there was a dead heat for the win despite the number of horses involved in the dead heat.

(17) The purchase of double perfecta tickets other than through pari-mutuel machines and the sale of double perfecta tickets from one (1) individual to another shall be deemed illegal and shall be prohibited.

Section 8. Big Q Rules. (1) Each operator wishing to conduct Big Q wagering shall first petition the commission for permission to do so.

(2) Each operator shall either print in the daily program or prominently post at all areas where Big Q wagering is conducted the complete rules for Big Q wagering as established by this section.

(a) The Big Q shall consist of selecting the quinella (the first two (2) horses to finish) of each of two (2) consecutive races. Pari-mutuel wagering tickets shall be sold upon the first race of the (2) races only. The division of the pool shall be calculated as in a straight pool, except as provided by this section.

(b) Entries or field horses shall not be allowed to start in any race comprising the Big Q.

(c) Tickets shall be sold only at Big Q windows and only from automatic double-issuing machines.

(d) Each bettor purchasing tickets shall designate his two (2) selections as the first two (2) horses to finish in the first race of the two (2) races.

(e) After the official declaration of the first two (2) horses to finish the first of the Big Q races, each bettor holding a ticket combining the two (2) horses to finish shall, prior to the running of the second race, exchange the winning ticket for a Big Q exchange ticket at the Big Q windows and shall select the first two (2) horses to finish in the second race of the Big Q. Further money shall not be required of the holder of the ticket to make the exchange.

(f) A Big Q exchange ticket upon the second race shall not be issued except upon the surrender of the Big Q ticket from the first race pursuant to paragraph (f) of this subsection. The Big Q pool obtained from the sales of the Big Q tickets upon the first race shall be held and divided among the winning tickets of the Big Q exchange tickets, pursuant to the rules established by this section. Big Q windows shall be open to make the exchange only after the first race has been declared official and the windows shall close at post time at the start of the second race of the Big Q races.

(g) If a winning Big Q ticket from the first race is not presented for exchange within the time provided, the bettor shall forfeit all rights to any distribution or refund unless the second half of the Big Q is cancelled or declared "no race", or if no exchange ticket includes either the first or second horse of the second half of the Big Q.

(h) If a horse is scratched in the first race, all Big Q tickets on the scratched horse shall be refunded. If a horse is scratched in the

second race, the holders of tickets on the scratched horse shall be entitled to exchange their tickets for another selection. If there is a late scratch, after the exchange windows have closed, all exchange tickets combining the scratched horse shall become consolation tickets and shall be paid a price per dollar denomination calculated as follows: The net Big Q pool (gross pool less commission) shall be divided by the total purchase price of all tickets combining the winnings of the first race of the Big Q. The quotient obtained shall be the price to be paid to holders of exchange tickets combining the scratched horse in the second race of the Big Q. The entire consolation pool (number of eligible tickets times the consolation price) plus the breakage shall be deducted from the net Big Q pool.

(i) If no ticket is sold as a winning combination in the first race of the Big Q, the Big Q pool shall be divided among those having tickets including the horse finishing first or second and the distributions shall be calculated and made as a place pool. If that occurs, the Big Q race shall end and the pool shall be closed for the day.

(j) If no Big Q exchange ticket is sold on the winning combination, the net pool shall be apportioned equally between those having tickets including the horse finishing second in the same manner in which a place pool is calculated and distributed.

(k) If a Big Q exchange ticket combines only one (1) of the winners and no Big Q exchange ticket combines the other winner, the entire pool shall be distributed as a straight pool to the holders of those tickets.

(l) If no exchange ticket includes either the first or second horse of the second half of the Big Q, the entire net pool shall be distributed as a straight pool to all holders of exchange tickets and winning combinations of the first half that have not been exchanged.

(m) If there is a dead heat for place in the first race of the Big Q races, all Big Q tickets combining the first horse and either of the place horses shall be eligible for exchange for Big Q exchange tickets.

(n) If there is a dead heat for place in the second race of the Big Q races, the pool shall be divided, calculated, and distributed as a place pool to the holders of Big Q exchange tickets combining the first horse and either of the place horses. If there is a dead heat to place and there are no tickets sold on one (1) combination, then the other combination having winning horses shall be declared the winner.

(o) If no exchange tickets combine the winning horse with either of the place horses in the dead heat, the Big Q pool shall be calculated and distributed as a place pool to holders of tickets combining either of the place horses, except if any exchange tickets combine both horses in the dead heat for place, the Big Q pool shall be calculated and distributed as a place pool to holders of such tickets.

(p) If for any reason the first race of the Big Q races is cancelled or declared "no race", a full and complete refund shall be made from the Big Q pool.

(q) If for any reason, the second of the Big Q races is cancelled or declared "no race", the pool shall be calculated as a straight pool and shall be distributed among the holders of tickets combining the first two (2) horses of the first race of the Big Q otherwise eligible for Big Q exchange tickets and also distributed to holders of the Big Q exchange tickets.

(r) If there is a dead heat for the winning horses in either of the two (2) consecutive races for the Big Q, the calculation of the distribution of the Big Q pool shall be made in the manner in which any ordinary quinella pool would be made if there was a dead heat for the win despite the number of horses involved in the dead heat.

(s) If an incorrect exchange ticket is issued during the second half of the Big Q pool, the incorrect exchange ticket shall be turned in to the state auditor prior to the running of the second half. The tickets shall be deducted from both exchange and individual combination totals. The ticket shall be voided and filed with the performance worksheets and a report, including the seller's name and license number, shall be made to the commission of the complete incident.

Section 9. Trifecta Wagering. (1) The trifecta shall be a contract by the purchaser of a ticket combining three (3) horses in a single race, selecting the three (3) horses that will subsequently finish first, second, and third in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as



officially posted.

(2) The trifecta shall not be a parlay and shall have no connection with or relation to the win, place, and show betting and shall be calculated as an entirely separate pool.

(3) Trifecta tickets shall not be sold in less than one (1) dollar denominations.

(4) If no ticket is sold on the winning combination of a trifecta pool, the net pool shall be distributed to the holders of tickets selecting the win and place finishers in that order. If no ticket is sold combining the win and place finish, the net pool shall be distributed to the holders of tickets selecting the winner.

(5) If no ticket is sold that requires distribution of the net trifecta pool to a winner pursuant to subsection (4) of this section, the association shall make a full refund of the trifecta pool.

(6) If there is a dead heat or dead heats, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead heated, shall be winning tickets. The payoff shall be calculated as a place pool.

(7) If there is a scratch in the trifecta, no exchanges shall be made. All tickets which include the scratched horse shall be eliminated from further participation in the trifecta pool and shall be refunded.

(8) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the trifecta shall race as a single wagering interest for the purpose of trifecta pari-mutuel pool calculations and payouts to the public. Entries or field horses shall not be allowed in any race that the trifecta is being sold.

(9) Trifecta tickets shall be sold only by the licensee through pari-mutuel machines programmed to print all selections on one (1) ticket. Resale of such tickets from one (1) individual to another shall be prohibited and shall be grounds for ejection.

(10) Each association shall print in heavy type in a conspicuous place in its printed program all the provisions of this section and post printed copies of this section about the track.

(11) For the purpose of trifecta wagering, the trifecta race shall be drawn to consist of six (6) separate wagering interests ~~(starters)~~.

(12) Nothing in this section shall preclude the sale of combination trifecta tickets in the amount of six (6) dollars.

Section 10. Twin Trifecta. The twin trifecta shall be a form of pari-mutuel wagering. It shall not be a parlay and shall not have a connection with or relation to any other pari-mutuel pools made and conducted by an association. The twin trifecta shall not be connected with or related to any win, place, and show pools shown on the totalizator board, and it shall not be governed by any division rules pertaining to the distribution of any other pari-mutuel pools.

(1) In the twin trifecta, the bettor shall select the three (3) horses that will finish first, second, and third in each of the two (2) designated twin trifecta races in the exact order as officially posted.

(2) Twin trifecta tickets shall be sold and exchanged only from the association's ticket-issuing machines.

(3) Twin trifecta wagers shall be made only in denominations of three (3) dollars.

(4) Each bettor purchasing twin-trifecta tickets shall designate three (3) selections as the first three (3) horses to finish in that order in the first race of the designated two (2) twin trifecta races.

(5) After the wagering closes for the first half of the twin trifecta, the commissions shall be deducted from the pool pursuant to KRS 138.510. The remaining pool shall then be divided into two (2) separate pools of equal amounts.

(6) The money in the first part of the divided pool shall be distributed to the holders of the twin trifecta tickets selecting the first three (3) horses, in order, on the first designated twin trifecta race, in accordance with this administrative regulation. The term "first part of divided pool" shall mean one-half (1/2) of the net distributive ~~(divisible)~~ pool of the total money wagered in the twin trifecta on the current program only and, specifically excluded therefrom shall be any carry-over of any special cumulative second race twin trifecta pool from any previous program.

(7) The second part of the divided pool shall be placed in a separate pool to be distributed to holders of second half twin trifecta tickets selecting the first three (3) horses, in order, on the second designated twin trifecta race, in accordance with this administrative

regulation.

(8) In the first half of the twin trifecta only, if there is a failure to select, in exact order, the first three (3) horses, payoffs and exchanges shall be made on twin trifecta tickets selecting in the following order of priority:

(a) The first two (2) horses in exact order, if no such ticket is outstanding, then;

(b) The first horse, and any ticket within the applicable above order of priority shall be deemed a winning ticket entitling the holder thereof to an exchange ticket, in addition to the usual payoff for first half winners; and

(c) Failure to select winner to win, regardless of the selection of the exact order of the second or third horse shall cause a refund to all twin trifecta tickets.

(9) After the official declaration of the first three (3) horses to finish in the first race of the twin trifecta, each bettor holding a winning ticket shall, prior to the running of the second twin trifecta race, exchange the winning ticket for both the monetary value established by the association's mutuel department and a twin trifecta exchange ticket and shall select the three (3) horses to finish in the second race of the twin trifecta in exact order as officially posted. Further money shall not be required of the holder of the winning ticket in order to make the exchange. Each association conducting the twin trifecta shall designate all windows to be used as exchange windows unless the first half payoff is \$900 or more in winnings (if such winnings are at least 300 times the amount of the single wager). If that occurs, valid exchange tickets shall be exchanged only at all windows designated IRS windows.

(10) A twin trifecta exchange ticket upon the second race of the twin trifecta shall not be issued except upon surrender of the winning twin trifecta ticket from the first race of the twin trifecta pursuant to subsection (9) of this section. Windows for the purpose of cashing and exchanging twin trifecta tickets shall be open only after the first race of the twin trifecta has been declared official and windows shall close when wagering closes for the race designated as the second half of the twin trifecta. More than one (1) race shall not elapse between the race designated the first half of the twin trifecta and the race designated as the second half of the twin trifecta.

(11) If a winning twin trifecta ticket from the first race is not presented for cashing and exchange with the time provided, the bettor may still collect the monetary value attached to the ticket but shall forfeit all rights to any distribution of the second race twin trifecta pool and the carry-over jackpot.

(12) If a horse is scratched from the first race of the twin trifecta, all twin trifecta tickets on the scratched horse shall be refunded. If a horse is scratched from the second race of the twin trifecta, public address announcements shall be made and a reasonable time shall be given for exchange of tickets on the scratched horse.

(13) If there is a dead heat in either the first or second half of the twin trifecta, all twin trifecta tickets selecting the correct order of finish counting a horse in a dead heat as finishing in any position dead heated shall be winning tickets. If there is a dead heat occurring in the first half, the payoff shall be calculated as a win pool. If there is a dead heat occurring in the second half, contrary to the usual pari-mutuel practice, the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff price.

(14) If there is no twin trifecta ticket issued accurately selecting the officially declared first three (3) finishers of the second race, the pool, as divided earlier, shall be held for the next consecutive program and combined with that program's second race twin trifecta pool. This sum shall be termed the "carry-over jackpot". Distribution of the special cumulative second race twin trifecta pool shall be made only upon the accurate selection, in exact order, of the first three (3) officially declared finishers of the second twin trifecta race except on the closing program of the meeting pursuant to subsection (16) of this section.

(15) If for any reason the second half of the twin trifecta is not declared "official", the winning ticket holders who have cashed their tickets on the first half and have received an exchange ticket shall be entitled to the remaining amount of the current program's divided pool.

(16) On the closing program of the meeting, the current carry-over jackpot, if any, plus the second half pool for that program shall be combined and distributed in the following manner:



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(a) The total twin trifecta pool shall be distributed to the holders of twin trifecta exchange tickets showing the first three (3) horses to finish, in exact order.

(b) If there are no twin trifecta exchange tickets showing the first three (3) horses, in the exact order, the payoff shall be made on twin trifecta exchange tickets selecting the first two (2) horses in exact order.

(c) If there is no twin trifecta exchange ticket showing the first two (2) horses in exact order, the first horse, and any ticket within the applicable above order of priority shall be deemed a winning ticket entitling the holder to the total twin trifecta pool.

(d) If there are no valid exchange ticket holders, the total twin trifecta pool shall be distributed to the holders of first half tickets selecting the first two (2) horses in the exact order.

(e) If there are no first half twin trifecta tickets showing the first two (2) horses, the total twin trifecta pool shall be distributed to the holders of first half tickets selecting the horse of the first half of the twin trifecta.

(f) If no ticket is sold that requires the distribution of the net pools as established by this subsection, the association shall equally distribute the total twin trifecta pool to all first half ticket holders.

(17) Sales of twin trifecta tickets other than from the association's ticket-issuing machines or from one (1) individual to another shall be deemed illegal. Exchange tickets shall not be transferable. Persons involved in the unauthorized transfer of exchange tickets shall be ejected.

Section 11. Superfecta Wagering. (1) The superfecta shall be a contract by the purchaser ~~[purchases]~~ of a ticket combining four (4) horses in a single race, selecting the four (4) horses that subsequently finish first, second, third, and fourth in that race.

(2) Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(3) The superfecta shall not be a parlay and shall have no connection with or relation to the win, place, or show betting and shall be calculated as an entirely separate pool.

(4) Superfecta tickets shall not be sold in less than one (1) dollar denominations.

(5) If no ticket is sold on the winning combination of a superfecta pool, the net pool shall be distributed to the holders of tickets selecting the win, place, and show finishers in that order.

(a) If no ticket is sold combining the win, place, and show finish, the net pool shall be distributed to the holders of tickets selecting the win, and place finishers in that order.

(b) If no ticket is sold combining the win and place finish, the net pool shall be distributed to the holders of tickets selecting the winner.

(6) If no ticket is sold that requires distribution of the net superfecta pool to a winner pursuant to subsection (5) of this section, the association shall make a full refund of the superfecta pool.

(7) If there is a dead heat or dead heats, all superfecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead heated, shall be winning tickets and the payoff shall be calculated as a place pool.

(8) If there is a scratch in the superfecta, no exchanges shall be made. All tickets which include the scratched horse shall be eliminated from further participation in the superfecta pool and shall be refunded.

(9) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the superfecta shall race as a single wagering interest for the purpose of superfecta pari-mutuel pool calculations and payouts to the public.

(10) Superfecta tickets shall be sold only by the licensee through pari-mutuel machines programmed to print all sections on one (1) ticket. Resale of the ~~[such]~~ tickets from one (1) individual to another shall be prohibited and shall be grounds for ejection.

(11) Each association shall print in heavy type in a conspicuous place in its printed program all the provisions of this section and post printed copies of this section about the track.

(12) For the purposes of superfecta wagering, the superfecta race shall be drawn to consist of eight (8) separate wagering interests.

(a) In the event that a horse or horses are scratched from a superfecta race with the race now containing less than eight (8)

separate wagering interests and wagering has not commenced, the superfecta pool shall be cancelled.

(b) In the event that a horse or horses are scratched from a superfecta race and wagering has commenced, the superfecta pool shall remain until there are less than six (6) separate wagering interests.

(13) Nothing in this section shall preclude the sale of combination superfecta tickets in the amount of twenty-four (24) dollars.

Section 12. Pick-3 Wagering. (1) The Pick-3 pari-mutuel pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place, or show pool shown on the totalisator board, nor to the administrative regulation governing the distribution of the ~~[such]~~ other pools.

(2) A valid Pick-3 ticket shall be evidence of a binding contract between the holder of the ticket and the racing association, and the ~~[said]~~ ticket shall constitute an acceptance of Pick-3 provisions and administrative regulations.

(3) The Pick-3 pari-mutuel pool consists of amounts contributed for a selection for win only in three (3) consecutive races designated by the association with the approval of the Kentucky Racing Commission. Each person purchasing a Pick-3 ticket shall designate the winning horse in each of the three (3) races comprising the Pick-3.

(4) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Pick-3 shall race as a single wagering interest for the purpose of the Pick-3 pari-mutuel pool calculations and pay-outs to the public. If any part of either entry or field racing as a single interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the Pick-3 calculation, and the selection shall not be deemed scratched.

(5) The net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winners in all three (3) races comprising the Pick-3.

(6) If no ticket is sold combining the three (3) winners of the Pick-3, the net amount in the pari-mutuel pool shall be distributed among the holders of tickets which include the winners of at least two (2) of the three (3) races comprising the Pick-3.

(7) If no ticket is sold combining at least two (2) winners of the Pick-3, the net amount in the pari-mutuel pool shall be distributed among the holders of tickets which include the winner of any one (1) race comprising the Pick-3.

(8) If no ticket is sold that would require distribution of the Pick-3 pool to a winner pursuant to subsections (6) and (7) of this section, the association shall make a complete and full refund of the Pick-3 pool.

(9) If for any reason one of the races comprising the Pick-3 is cancelled, the net amount of the pari-mutuel pool shall be distributed as provided above in subsections (6), (7), and (8) of this section.

(10) If for any reason two (2) or more races comprising the Pick-3 are cancelled, a full and complete refund shall be made of the Pick-3 pool.

(11) In the event a Pick-3 ticket designates a selection in any one (1) or more races comprising the Pick-3 and that selection is scratched, excused, or determined by the judges or ~~[A]~~ stewards to be a nonstarter in a race, the actual favorite, as evidenced by the amounts wagered in the final win pool of the race, shall ~~[will]~~ be substituted for the nonstarting selection for all purposes, including pool calculations and payoffs. In the event the win pool total for two (2) or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.

(12) In the event of a dead heat for win between two (2) or more horses in any Pick-3 race, all of the ~~[such]~~ horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(13) A ~~[No]~~ pari-mutuel ticket for the Pick-3 shall not be sold, exchanged, or cancelled after the time of the closing of wagering in the first of the three (3) races comprising the Pick-3, except for refunds on Pick-3 tickets as required by this administrative regulation, and a person shall not ~~[no person shall]~~ disclose the number of tickets sold in the Pick-3 pool or the number of tickets selecting winners of Pick-3 races until the time that ~~[such time as]~~ the judges or ~~[A]~~ stewards have determined the last race comprising the Pick-3 to

be official.

Section 13. Pick-4 Wagering. (1) The Pick-4 pari-mutuel pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place, or show pool shown on the totalisator board, nor to the rules governing the distribution of the ~~[such]~~ other pools.

(2) A valid Pick-4 ticket shall be evidence of a binding contract between the holder of the ticket and the racing association, and the ~~[said]~~ ticket shall constitute an acceptance of Pick-4 provisions and administrative regulations ~~[rules]~~.

(3) The Pick-4 pari-mutuel pool consists of amounts contributed for a selection for win only in four (4) consecutive races designated by the association with the approval of the Kentucky Racing Commission. Each person purchasing a Pick-4 ticket shall designate the winning horse in each of the four (4) races comprising the Pick-4.

(4) Those horse constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Pick-4 shall race as a single wagering interest for the purpose of the Pick-4 pari-mutuel pool calculations and pay-outs to the public. If any part of either entry or field racing as a single interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the Pick-4 ~~[Pick-3]~~ calculation, and the selection shall not be deemed scratched.

(5) The net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winners in all four (4) races comprising the Pick-4.

(6) If no ticket is sold combining the four (4) winners of the Pick-4, the net amount in the pari-mutuel pool shall be distributed among holders of tickets which include the winners of at least three (3) of the four (4) races comprising the Pick-4.

(7) If no ticket is sold combining at least three (3) winners of the pick-4, the net amount in the pari-mutuel pool shall be distributed amount of the holders of tickets which include the winners of at least two (2) of the four (4) races comprising the Pick-4.

(8) If no ticket is sold combining at least two (2) winners of the Pick-4, the net amount in the pari-mutuel pool shall be distributed among the holders of tickets which include the winner of any one (1) race comprising the Pick-4.

(9) If no ticket is sold that would require distribution of the Pick-4 pool to a winner pursuant to subsections (6), (7), and (8) of this section, the association shall make a complete and full refund of the Pick-4 pool.

(10) If for any reason one (1) of the races comprising the Pick-4 is cancelled, the net amount of the pari-mutuel pool shall be distributed as provided above in subsections (6), (7), (8), and (9) of this section.

(11) If for any reason three (3) or more races comprising the Pick-4 are cancelled, a full and complete refund will be made of the Pick-4 pool.

(12) In the event a Pick-4 ticket designates a selection in any one (1) or more races comprising the Pick-4 and that selection is scratched, excused, or determined by the judges or ~~[4]~~ stewards to be a nonstarter in a race, the actual favorite, as evidenced by the amounts wagered in the final win pool of the race, shall ~~[will]~~ be substituted for the nonstarting selection for all purposes, including pool calculations and payoffs. In the event the win pool total for two (2) or more favorites are identical, the substitute selection shall be the betting interest with the lowest program number.

(13) In the event of a dead heat for win between two (2) or more horses in any Pick-4 race, all of the ~~[such]~~ horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(14) A ~~[No]~~ pari-mutuel ticket for the Pick-4 shall not be sold, exchanged, or cancelled after the time of the closing of wagering in the first of the four (4) races comprising the Pick-4, except for refunds on Pick-4 tickets as required by this administrative regulation, and a ~~[no]~~ person shall not disclose the number of tickets sold in the Pick-4 pool or the number of tickets selecting winners of Pick-4 races until the time when the judges or stewards ~~[such time as the judges/stewards]~~ have determined the last race comprising the Pick-4 to be official.

Section 14. Pick-4 Wagering with Carryover. (1) The Pick-4 with a carryover abides by the same requirements ~~[rules and administrative regulations]~~ as stated in Section 13 of this administrative regulation with the exception of how the payoff is calculated.

(2) The net amount of the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winners of all four (4) races comprising the Pick-4.

(3) If no ticket is sold combining the four (4) winners of the Pick-4, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick-4 races.

(4) The remainder of the net pool shall be added to the carryover. The carryover amount shall then be added to the Pick-4 pool the following race day.

(5) In the event that there is no ticket sold combining the four (4) winners of the Pick-4 and it is the final race of the meet, the entire net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of races.

Section 15. ~~[Types of Wagering Allowed]~~ The following types of wagering shall be permitted at all tracks given racing dates by the commission:

(1) Normal win, place, and show betting on each race;

(2) A daily double on the first and second race; and

(3) Any other methods of betting approved in advance by the commission.

Section 16. ~~[42.]~~ Betting Interests Involving More than One (1) Horse. If two (2) or more horses entered for the same race are determined by the commission to have common ties through ownership and are joined by the commission as a mutuel entry, the mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. If the number of horses competing in a race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator together with horses of higher numbers, shall be grouped in the mutuel field as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

Section 17. ~~[43.]~~ Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not provided for by this administrative regulation, the pari-mutuel manager shall make an immediate decision and shall by the quickest means possible notify the presiding judge and render a full report to the commission.

Section 18. ~~[44.]~~ Incorporation by Reference. (1) "Race Track Pari-Mutuel and Admissions Report, 73A100", 7/00 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: February 28, 2002

FILED WITH LRC: March 8, 2002 at 8 a.m.

PUBLIC PROTECTION AND REGULATION CABINET  
Kentucky Racing Commission  
(As Amended at ARRS, May 14, 2002)

811 KAR 1:215. Kentucky Standardbred Development Fund.

RELATES TO: KRS 230.210 to 230.375, 230.990

STATUTORY AUTHORITY: KRS 230.770

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.770(1) establishes the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund. KRS 230.770(5) and (6)

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authorize the commission to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. (1)(a) An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Kentucky Standardbred Development Fund, shall register the stallion by February 1 of the breeding season with the Kentucky Racing Commission.

(b) Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the Commonwealth of Kentucky for the remainder of the breeding season.

(2) A virgin standardbred stallion entering stud for the first time:

(a) May be registered prior to his first breeding; and

(b) Shall stand in the Commonwealth of Kentucky the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere.

(3) A stallion shall be registered on "Application for Standardbred Stallion Certificate for Eligibility".

Section 2. The following fees shall be paid:

(1) Sire registration fee for a stallion with an annual book of twenty-five (25) or more mares shall be one (1) full advertised stud fee.

(2) Sire registration fee for a stallion with an annual book of twenty-four (24) mares or less shall be twenty (20) percent of the advertised stud fee or a minimum of \$200.

(3) The annual stallion registration fee shall follow the gait of the stallion.

(4) Stallion fees shall be due October 1 of the year nominated.

(5) If a stallion was nominated to the Kentucky Standardbred Development Fund/Kentucky Sires Stakes Program, the stallion fee shall be paid on the October 1 deadline whether or not mares were bred to the nominated stallion.

(6) The registration fee for a stallion standing at Private Treaty shall be the average stud fee charged for the breeding season.

(7) At the end of a breeding season, the owner or lessee of a stallion standing at Private Treaty shall submit to the Kentucky Racing Commission a list of mares bred and prices charged.

Section 3. (1) The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.

(2) The "Standardbred Stallion Certification of Eligibility Renewal" shall be filed by February 1 of the breeding season.

(3) The annual renewal fee for registration of stallions to the Kentucky Standardbred Development Fund shall be:

(a) One (1) full advertised stud fee for a stallion with an annual book of twenty-five (25) or more mares; and

(b) Twenty (20) percent of the stud fee or a minimum of \$200 for stallions with an annual book of twenty-four (24) or less mares.

(4) The annual stallion registration fee shall follow the gait of the stallion.

(5) Stallion fees shall be due October 1 of the year nominated.

(6) If a stallion was nominated to the Kentucky Standardbred Development Fund/Kentucky Sires Stakes Program, the stallion fee shall be paid on the October 1 deadline whether or not mares were bred to the nominated stallion.

Section 4. An owner of a standardbred stallion registered with the commission shall submit by October 1 the stallion registration fee, as set forth in Sections 2 and 3 of this administrative regulation, and a report of each stallion and mares bred by each stallion during the preceding twelve (12) months.

Section 5. In order to qualify for the Kentucky Standardbred Development Fund, a foal shall be the product of the mating of a mare with a Kentucky registered and resident stallion.

Section 6. (1) If an owner or a lessee of a registered stallion fails to furnish information the commission has requested relating to the registration or renewal of registration of a horse, the commission shall:

(a) Suspend or deny the registration of the stallion; and

(b) Schedule a hearing, pursuant to 810 KAR 1:029.

(2) After the hearing, the commission shall determine whether the failure to furnish information was willful and shall do one (1) or more of the following:

(a) Suspend the registration;

(b) Rescind its suspension of the registration;

(c) Deny or revoke the registration; or

(d) Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

Section 7. (1) If the commission determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion contains false or misleading information, the commission shall:

(a) Suspend or deny the registration of the stallion; and

(b) Summon the person who executed the application, and any person who has knowledge relating to the application, to appear before the commission at a hearing pursuant to 810 KAR 1:029.

(2) After the hearing, the commission shall determine whether the person knew or had reason to know that the information was false or misleading, and shall do one (1) or more of the following:

(a) Rescind its suspension or denial of the registration;

(b) Suspend, deny, or revoke the registration; or

(c) Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

(3) If a person summoned by the commission fails to respond to the summons, the commission:

(a) Shall suspend or deny the registration of the stallion;

(b) Shall notify the person in writing of the action taken by the commission; and

(c) May bar from further registration, horses owned by the person who executed the application containing false or misleading information.

Section 8. An owner or lessee of a stallion eligible or the Kentucky Standardbred Development fund shall designate a resident of Kentucky as the authorized agent who shall be responsible for:

(1) The registrations and records of the farm; and

(2) Complying with the requirements of the Kentucky Standardbred Development Fund.

Section 9. The "Authorized Agent" form shall be filed with the stallion registration.

Section 10. Sires stakes races in which any part of the purse is provided by the Kentucky Standardbred Development Fund shall be subject to administrative regulations promulgated by the Kentucky Racing Commission.

Section 11. A participant in a Kentucky sires stakes race shall have:

(1) Been sired by a stallion registered with the Kentucky Racing Commission; and

(2) Maintained eligibility for the Kentucky Standardbred Development Fund.

Section 12. Each race shall be a one (1) mile dash.

Section 13. Post positions for the final, consolation, and elimination races shall be an open draw with two (2) "also eligibles" drawn for the final and consolation race.

Section 14. A horse shall start in the eliminations in order to be eligible for the final or consolation race.

Section 15. A horse that is automatically eligible to race in the final race shall not start in the consolation race.

Section 16. Any horse which qualifies for the final or consolation by virtue of its finish in an elimination race but is disqualified and scratched from the final after the elimination race has been declared official, due to violation of 811 KAR 1:090, shall be replaced by the next horse that placed highest in the official order of finish of that particular elimination division, but did not qualify for the final or consolation.

(1) Two (2) horses shall be selected from those in eliminations that do not qualify for the final and consolation to be designated "also eligible".

(a) These "also eligibles" shall replace any other horse(s) scratched from the final or consolation for reasons other than violations of 811 KAR 1:090.

(b) The preference to determine which is the first "also eligible" shall be determined by taking the horse that placed highest in the official order of finish of all elimination divisions, but did not qualify for the final or consolation.

1. If horses are equal in the finish position, final preference shall be determined by lot.

2. The other horse shall be the second "also eligible".

(2) Scratched horses in the final and consolation shall be replaced by the horses designated in subsection (1) of this section in the following manner:

(a) If post positions have not been drawn, the horse shall take its place in the normal draw.

(b) If post positions have already been drawn, the horse shall assume the position of the scratched horse.

(c) A horse shall not be moved into the final or consolation as a replacement after the official "scratch time" deadline for the publication of the program.

(3) A single consolation race shall be held for those horses that are not racing in the final.

(a) The preference to determine the field for the consolation race shall be determined by taking the nine (9) horses, including the two (2) "also eligibles" selected for the final, that placed highest in the official order of finish of all elimination divisions, but did not race in the final.

(b) If horses are equal in the finish position, final preference shall be determined by lot.

(c) The other horse shall be the second "also eligible".

(d) A minimum of six (6) starters shall be required for the consolation.

(e) Two (2) "also eligibles" may be drawn for the consolation.

Section 17. All starters shall be subject to the detention policy of the racetrack.

Section 18. (1) There shall not be more than:

(a) Nine (9) starters per final race on a mile track; and

(b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.

(2) If more than nine (9) horses for a mile track or (8) eight horses for a one-half (1/2) mile track declare in, eliminations shall be held the week before the final race.

(3) All horses shall be on the gate for the final race.

Section 19. (1) There shall be a \$500 starting fee for each horse declared to race.

(2) The starting fee shall be payable to the racing association at the time of declaration.

(3) Purses for the final races and the consolation races shall consist of:

(a) Nominating fees;

(b) Sustaining fees;

(c) Stallion fees; and

(d) Added money from the Commonwealth of Kentucky.

(4) These monies shall be divided as follows:

(a) Eighty (80) percent for the final race, and twenty (20) percent for the consolation race in each sex and gait division; or

(b) All money to the final race, if there is not a consolation race in that sex and gait division.

(5) Elimination races shall be raced for the \$500 starting fee plus added money from the Kentucky Standardbred Development Fund.

(6) No further payments shall be required to start.

Section 20. (1) The total number of horses entered shall determine the number of elimination races that shall be required.

(2) The number of horses entered to require elimination races to be split into divisions shall be as follows:

(a) One (1) mile track:

1. Nine (9) horses entered or less - an elimination race shall not be required.

2. Ten (10) to twelve (12) horses entered - one (1) elimination race.

3. Thirteen (13) to eighteen (18) horses entered - two (2) elimination races.

4. Nineteen (19) to twenty-seven (27) horses entered - three (3) elimination races.

5. Twenty-eight (28) to thirty-six (36) horses entered - four (4) elimination races.

6. Thirty-seven (37) to forty-five (45) horses entered - five (5) elimination races.

7. Forty-six (46) to fifty-four (54) horses entered - six (6) elimination races.

8. If the need exists for seven (7) or more eliminations, eligibility to the final shall be determined in a manner consistent with the published conditions.

(b) One-half (1/2) and five-eighths (5/8) mile track:

1. Eight (8) horses entered or less - an elimination race shall not be required.

2. Nine (9) to ten (10) horses entered - one (1) elimination race.

3. Eleven (11) to sixteen (16) horses entered - two (2) elimination races.

4. Seventeen (17) to twenty-four (24) horses entered - three (3) elimination races.

5. Twenty-five (25) to thirty-two (32) horses entered - four (4) elimination races.

6. Thirty-three (33) to forty (40) horses entered - five (5) elimination races.

7. Forty-one (41) to forty-eight (48) horses entered - six (6) elimination races.

8. If the need exists for seven (7) or more eliminations, eligibility to the final shall be determined in a manner consistent with the published conditions.

Section 21. Starters for the final races, if eliminations are required, shall be as follows:

(1) One (1) mile track:

(a) Two (2) elimination races - the first four (4) horses from each race and one (1) horse drawn from the fifth place finishers.

(b) Three (3) elimination races - the first three (3) horses from each race.

(c) Four (4) elimination races - the first two (2) horses from each race and one (1) horse drawn from the third place finishers.

(d) Five (5) elimination races - the winners from each race and four (4) horses drawn from the second place finishers.

(e) Six (6) elimination races - the winners from each race and three (3) horses drawn from the second place finishers.

(2) One-half (1/2) and five-eighths (5/8) mile track:

(a) Two (2) elimination races - the first four (4) finishers from each race.

(b) Three (3) elimination races - the first two (2) horses in each race and two (2) horses drawn from the third place finishers.

(c) Four (4) elimination races - the first two (2) horses from each race.

(d) Five (5) elimination races - the winners from each race and three (3) horses drawn from the second place finishers.

(e) Six (6) elimination races - the winners from all six (6) races and two (2) horses drawn from the second place finishers.

(3) In the event of a dead heat among the horses qualifying to the final or consolation, preference shall be determined by lot among such tie horses.

Section 22. (1) There shall not be a consolation race if:

(a) Less than fifteen (15) horses declare in to the stake on a one (1) mile track; and

(b) Less than fourteen (14) horses declare in to the stake on a one-half (1/2) mile track.

(2) If a consolation race is not held, all monies shall be added to

the final race.

Section 23. (1) Gait shall be specified by the first two (2) year old payment.

(2) Change of gait:

(a) May be made at the time of declaration at the track; and  
(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 24. A race shall be raced in separate divisions as follows:

- (1) Colt/gelding/ridgeling division; and
- (2) Filly divisions.

Section 25. (1) The purses for all races shall be distributed on the following percentage basis:

- (a) 50-25-12-8-5: five (5) starters or more;
- (b) 50-25-15-10: four (4) starters;
- (c) 60-30-10: three (3) starters;
- (d) 65-35; two (2) starters; and
- (e) 100: one (1) starter.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

Section 26. (1) If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the eligible horses for the uncontested event at the time the event is canceled.

(2) The eligible horses shall include only horses that made the three (3) payments required by Section 33 of this administrative regulation.

(3) The added monies provided by the Commonwealth of Kentucky shall be:

- (a) Rolled over into the following year; and
- (b) Distributed evenly between the races of each:
  1. Age;
  2. Sex; and
  3. Gait.

(4)(a) If the race is drawn, the monies shall be equally divided among the horses entered to start; and

(b) The monies shall include:

1. Stake payments;
2. Declaration fees;
3. Purses provided by the Kentucky Standardbred Development Fund; and
4. Added monies provided by the Commonwealth of Kentucky.

Section 27. Starters shall declare in at each track at the time specified and advertised by the association conducting the event.

Section 28. (1) At the declaration a started shall:

(a) Show at least one (1) charted race line with no breaks within forty-five (45) days prior to the day of the race; and

(b) Have satisfied the following time requirements:

1. A two (2) year old trotter shall have been timed in 2:14 or faster;
2. A two (2) year old pacer shall have been timed in 2:12 or faster;
3. A three (3) year old trotter shall have been timed in 2:10 or faster; and
4. A three (3) year old pacer shall have been timed in 2:08 or faster.

(2) A horse shall be scratched from a race if the declarer has not advised the race secretary of a start that might be on the electronic eligibilities.

(3) The requirements of this subsection shall apply to wagering and nonwagering races.

Section 29. (1) At a scheduled meeting of the commission, the commission:

- (a) Shall establish the following year's distribution of funds for stake races; and
- (b) Shall authorize expenditures at a time it designates.

(2) The racing dates for sires stakes shall be issued after the track's race dates are set.

Section 30. The Kentucky Standardbred Development Fund shall provide a trophy for each event.

Section 31. (1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible as a three (3) year old.

Section 32. Nomination and sustaining payments shall be made to the Kentucky Standardbred Development Fund in U.S. funds.

Section 33. (1) Yearlings shall be nominated by May 15 of their yearling year.

(2) Nomination fee shall be forty (40) dollars per yearling.

(3) A nomination shall be accompanied by a photocopy of the United States Trotting Association registration certificate.

(4)(a) If the May 15 deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required.

(b) The late supplemental payment shall be accepted if:

1. It is received by April 1 of the two (2) year old; and
2. The two (2) year old March 15th payment has been made.

(5) A fee shall be payable to the Kentucky Standardbred Development Fund in U.S. funds.

(6) Sustaining payments shall be as follows:

(a) TWO (2) YEAR OLD PAYMENTS	
March 15	\$200
April 15	\$200
May 15	\$200
Declaration Fee	\$500
March 15 payment shall be mandatory to make entry eligible as a three (3) year old.	

(b) THREE (3) YEAR OLD PAYMENTS	
February 15	\$200
March 15	\$200
April 15	\$200
Declaration Fee (for each race)	\$500

Section 34. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Standardbred Stallion Certificate for Eligibility", 5/97;

(b) "Standardbred Stallion Certificate of Eligibility Renewal", 5/97; and

(c) "Authorized Agent" form, 5/97.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

C. FRANK SHOOP, Chairman

APPROVED BY AGENCY: February 28, 2002

FILED WITH LRC: March 8, 2002 at 8 a.m.

# PUBLIC PROTECTION AND REGULATION CABINET

Kentucky Racing Commission

(As Amended at ARRS, May 14, 2002)

811 KAR 1:225. Substance abuse by commission employees and licensees.

RELATES TO: KRS 230.215, 230.260(1), 230.290(2), (3), 230.310 [230.630, 230.640]

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3), 230.290(2) 230.310, 230.320(1) [Chapter 13A, 230.640(2)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.290 provides that all licensees shall be subject to all administrative



regulations promulgated by the commission. KRS 230.320 gives the commission the authority to promulgate administrative regulations that would result in disciplinary action being taken against a licensee. This administrative regulation prohibits licensees of the Kentucky Racing Commission from abusing alcohol or engaging in illegal drug use or activity while performing their duties, provides for drug and alcohol testing, and establishes consequences for violations of this administrative regulation.

Section 1. Definitions. (1) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) "Association" is defined by KRS 230.210(1).

(3) "Commission" is defined by KRS 230.210(2).

(4) "Crimes involving drugs and drug paraphernalia" means all activities made illegal under KRS Chapter 218A, other statutes or administrative regulations of this Commonwealth, and similar laws and regulations of other states and the United States, which include the use, possession, or trafficking in marijuana, cocaine, or any other controlled substances; possession or distribution of drug paraphernalia, or obtaining or using prescription drugs without a valid prescription.

(5) "Documentation" means proof of regular attendance at meetings, counseling sessions, clean drug test results (if suspended for a drug violation), and certification from the treatment program indicating full compliance with treatment and completion of the program.

(6) "Drug paraphernalia" means all equipment, products and material of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body an illegal drug in violation of any law or administrative regulation of this Commonwealth, any state, or the United States.

(7) "Licensee" means a person who:

(a) Has been duly issued a current and valid license to participate in horse racing in this Commonwealth;

(b) Is actively involved with the day to day activities associated with the training and handling of a horse; and

(c) Is not attending or participating in the sales of horses conducted on the premises of associations.

(8) "Under the influence of intoxicants" means a person's mental or physical abilities are impaired by the presence of alcohol or other drugs in his body to the degree that the person is not able to safely and properly perform his job functions.

Section 2. Prohibited Activities. A licensee shall not:

(1) Be under the influence of intoxicants while:

(a) Engaged in the activities for which the license is held; and

(b) On association grounds;

(2) Commit any crime involving drugs or drug paraphernalia;

(3) Fail to comply with substance abuse treatment imposed pursuant to an evaluation conducted under this administrative regulation;

(4) Tamper with a drug or alcohol test; or

(5) Refuse to submit to drug or alcohol testing upon request of the commission, a steward or [X] judge or other authorized employee of the commission.

Section 3. Evidence of Violation. The following shall be presumptive evidence of a violation of this administrative regulation:

(1) A breath or blood test result revealing an alcohol concentration of 0.05 percent or more while:

(a) Engaged in the activities for which the license is held; and

(b) On association grounds;

(2) A positive result from a drug test for marijuana, cocaine, or other controlled substance for which the licensee does not have a current and valid prescription; or

(3) A conviction in any court of law for a drug related offense.

Section 4. Discipline. (1) First offense.

(a) For a first time violation of this administrative regulation, the

offender's license shall be suspended.

(b) The offender shall be required to undergo an evaluation by a professional in the field of addictive or substance abuse disorders approved by the commission.

(c) If the evaluator determines the existence of a substance abuse problem, the offender shall be required to comply with the recommended course of treatment.

(d) Upon the expiration of seven (7) calendar days from the date of the suspension, the offender may request to be reinstated by the commission stewards.

(e) For a first time violation of this administrative regulation for an alcohol infraction or crime involving drugs and drug paraphernalia, the stewards shall have the discretion to impose a lesser penalty and may excuse the offense for counting purposes under this administrative regulation.

(2) Second offense.

(a) For a second violation of this administrative regulation within a three (3) year period, the offender's license shall be suspended.

(b) The offender shall be required to enroll in and complete a substance abuse program approved by the commission.

(c) Upon the expiration of sixty (60) calendar days from the date of the suspension, the offender may request to be reinstated by the commission stewards.

(3) Third offense. A third violation of this administrative regulation within a three (3) year period shall result in the revocation of the offender's license.

(4) Zero tolerance offense. Conviction in any court of law of a drug trafficking offense shall result in revocation of the offender's license even if it is a first offense under this administrative regulation.

(5) Preexisting offenses. A previous violation of 811 KAR 1:225, Section 3(9) or (19), relating specifically to intoxication or drug addiction shall be counted as a previous offense under this section.

(6) Fines. Any offender under this administrative regulation may also be fined not less than fifty (50) dollars nor more than \$1,000, at the discretion of the commission or stewards, in addition to any suspension imposed.

(7) In determining the three (3) year period under this administrative regulation, the period shall be measured from the date on which the violation occurred. If the violation is a failure to complete recommended treatment, the violation date shall be calculated from the date of the first missed meeting, or session.

Section 5. Reinstatement after Suspension. (1) To be reinstated after the first offense the offender shall [must] submit:

(a) Documentation of the completed evaluation;

(b) The recommendation of the evaluator in writing; and

(c) If treatment is recommended, evidence of compliance with the imposed course of treatment.

(2) After second offense. To be reinstated the offender shall submit documentation of compliance with the imposed course of treatment.

(3) Continuing compliance with treatment.

(a) If an offender is reinstated before the completion of the imposed course of treatment, continuing compliance with treatment shall be required.

(b) Documentation of continued compliance and final completion of treatment shall be provided upon request to the stewards or other employee authorized by the commission.

(c) Failure to comply with and complete the imposed course of treatment after reinstatement shall be deemed an additional violation.

Section 6. In deciding when drug tests should be administered the stewards/judges may require:

(1) All licensees be tested on a particular day;

(2) Licensees on a particular day be tested totally at random; or

(3) Those licensees that the stewards or [X] judges have a reasonable suspicion may be under the influence of intoxicants submit to drug and [or] alcohol testing.

(4) When determining whether there is reasonable suspicion to require testing, the stewards or [X] judges may consider [but are not limited to] any of the following factors:

(a) Unexplained or continued [rule] violations of the statutes or



administrative regulations which have a detrimental effect on racing; [X]

(b) Involvement in any accident which causes injury to person or animal at the track as well as any near accident which created a clear danger of accident or injury to person or animal at the track; [X]

(c) Willful conduct detrimental to horse racing as evidenced by continued ~~rule~~ violations of the statutes or administrative regulations, other disciplinary problems, behavioral problems, disturbances, or other similar conduct at the track; [X]

(d) Observable physical or emotional impairment at the track; [X]

(e) Involvement in a race of questionable outcome or circumstance as determined by the stewards or [X] judges in the exercise of their expertise; [X]

(f) Willful abuse of animal or person who is engaged in a race, work, or exercise at the track; [X]

(g) Prior positive **drug or alcohol** test or tests in this or other jurisdictions, excluding those where a valid legal prescription has been revealed; [X]

(h) Performance of prescribed duties in a manner which indicates a best effort to win is not present at the track; [X]

(i) Information supplied by:

1. A law enforcement agency;
2. The United States Trotting Association;
3. The Kentucky Horsemen's Association;
4. The Standardbred Investigative Services;
5. The Association of Racing Commissioners International; or
6. The racing commission of any state or country; [X]

(j) Any other physical conduct at the track which can be documented which would indicate reasonable grounds to believe the existence of, dependence on, possession of, or usage of:

1. A controlled substance; or
2. An alcohol violation; [X]

(k) Refusal to provide a urine or blood sample when requested to do so within this administrative regulation; or [X]

(l) Recent arrest or pending criminal charges regarding the sale, possession, manufacture, cultivation, or use of illegal drugs.

Section 7. Payment for Expenses Related to this Administrative Regulation. Licensees shall be responsible for all or part of the expenses associated with violating this administrative regulation, including the cost of treatment and reinstatement of the license. The responsibility for payment of expenses shall be as follows:

(1) For a first offense, the offender's responsibility for costs shall be at the discretion of the stewards or [X] judges or other authorized commission employee ~~and shall be based on the offender's ability to pay~~.

(2) For a second offense, the offender shall bear all costs.

(3) For a drug or alcohol test initiated by the commission to determine if a violation has occurred, the commission shall bear the cost unless the test reveals a violation. If the test reveals a violation, subsections (1) and (2) of this section shall apply.

(4) Failure to pay any costs imposed shall be grounds for denial of reinstatement.

Section 8. Administration of Administrative Regulation. The commission shall employ a competent individual to oversee and assist in the administration of this administrative regulation. The stewards and [X] judges of the commission shall enforce this administrative regulation under the direction of the commission and its authorized employee. ~~To regulate the eligibility of officials and licensees to participate in harness racing. The function of the administrative regulation is to provide for the testing of officials and licensees for alcohol and drugs.~~

Section 1. (1) While acting within the scope of his or her license while on the premises of an association licensed by the Kentucky Harness Racing Commission, no licensee of this commission nor employee of any racing association licensed by this commission shall have present within his/her body while on the grounds of said licensed association any amount of alcohol which would constitute legal impairment or intoxication.

(2) A breathalyzer reading of .05 percent blood alcohol content or more shall constitute legal impairment or intoxication.

(3) Every extended pari-mutuel track shall be equipped with a

breathalyzer device for the detection of alcohol.

(4) The deputy commissioner or his assistant may in his discretion direct all drivers, judges, starters and marshals licensed by this commission to submit to a blanket breathalyzer test. In the event such a blanket test is ordered by the deputy commissioner or his assistant, it must be administered across the board to all members of the class of licensees who are on the premises of the association. All licensees in the affected class of licensees must, when so ordered, submit to the breathalyzer examination. In the event a licensee refuses to take the breathalyzer examination, the licensee shall not be permitted to continue his/her duties for the remainder of the day. In the event a licensee takes the test as directed and the results thereof show a reading of .05 percent alcohol content or more, said licensee shall likewise not be permitted to continue his/her duties for that day.

(5) A harness racing judge or a designated harness racing commission representative may, with reasonable suspicion, random selection, or blanket testing, direct any licensee of this commission or employee of an association licensed by this commission to submit to a breathalyzer test for the detection of alcohol. In the event a licensee or employee refuses to take the breathalyzer examination, the licensee or employee shall not be permitted to continue his/her duties for the remainder of the day. In the event said licensee or employee takes the test as directed and the results thereof show a reading of .05 percent alcohol or more, said licensee or employee shall not be permitted to continue his/her duties for that day.

(6) Any licensee or employee who is suspended for one (1) day by the deputy commissioner, or his assistant or by a judge or harness racing commission representative, either for failure to take a breathalyzer examination or because the breathalyzer examination has a reading of .05 percent alcohol content or more, shall, after a hearing before the judges or commission, be subject to fine or suspension, or both, by the judges or commission for alcohol intoxication. A refusal by a licensee or employee to submit to the breathalyzer test may be introduced as evidence against any licensee or employee involved at this hearing. In the event the harness racing judges render such a decision, the ruling is appealable to the commission, as is the case in any other fine suspension imposed by the judges.

Section 2. (1) While acting within the scope of his or her license while on the premises of an association licensed by the Kentucky Harness Racing Commission, no licensee of this commission or employee of any racing association licensed by this commission shall have present within his/her body while on the grounds of said licensed association any controlled substance as listed in KRS Chapter 218A, or in Schedules I-V of Title 21 USC 812. No licensee of this commission or employee of any racing association licensed by this commission shall have present within his/her body while on the grounds of said licensed association any prescription legend drug, unless said prescription legend drug was obtained directly from or pursuant to a valid prescription of a duly licensed physician who is acting in the course of his/her professional practice.

(2) The deputy commissioner, a designated Harness Racing Commission representative, or the presiding judge may direct any person or persons licensed by this commission, based upon reasonable suspicion, random selection, or blanket testing, to deliver a specimen of urine in the presence of said harness racing official for the purpose of testing for the presence of controlled substances or drugs.

(3) The test results shall be filed with the Harness Racing Commission as soon as practicable, and the presiding judge apprised of the result.

(4) In the event a licensee refuses to deliver a specimen of urine or in the event the result of the test is positive for the presence of a controlled substance or an unauthorized legend drug as delineated in subsection (1) of this section, the licensee shall be automatically suspended for one (1) year. A second refusal or positive test will result in a lifetime suspension.

(5) The quantity of urine collected shall be sufficient to enable the sample to be split.

Section 3. The expense of the testing conducted to enforce this administrative regulation shall be borne either by the licensed racing

association, or, the individual licensee or employee involved. In the event the tests produce a negative result, the expense shall be paid by the licensed racing association involved. In the event the testing produces a positive result showing the presence of .05 percent alcohol content, or the presence of any controlled substance or legend drug, then the expense shall be borne by the licensee or employee involved.]

C. FRANK SHOOP, Chairman  
APPROVED BY AGENCY: February 28, 2002  
FILED WITH LRC: March 8, 2002 at 8 a.m.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Mine Safety Review Commission**  
**(As Amended at ARRS, May 14, 2002)**

**825 KAR 1:020. Administrative hearings procedures.**

RELATES TO: KRS Chapter 13B, 351.025(1), (2), 351.1041(1), (7) [(a)], (8), 351.105(11), 351.194  
STATUTORY AUTHORITY: KRS [13A.100(1)(a), 4] 351.194(1)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.194(1) requires [authorizes] the Mine Safety Review Commission to promulgate administrative regulations to establish administrative hearing and review procedures in accordance with KRS Chapter 13B, [which will be followed in determining if violations of mine safety laws have occurred]. This administrative regulation supplements the provisions of KRS Chapter 13B by establishing procedures for the filing, evaluation, and disposition of complaints.

Section 1. Except as provided in Sections 2 through 26 [28] of this administrative regulation, the provisions of KRS 13B.010 through 13B.170 shall govern all hearings conducted pursuant to KRS 351.1041(1)(a).

Section 2. Practice Before the Commission. (1) The hearing shall be adversarial and presided over by a hearing officer assigned [designated] by the commission, which may include a member of the commission or an independent hearing officer, who shall conduct the hearing in accordance with KRS 13B.050 to 13B.130. The charges and evidence against the respondent shall be presented by the prosecuting attorney from the Department of Mines and Minerals.

(2) The respondent may appear pro se or by counsel.

(3) Attorneys admitted to practice law in the Commonwealth of Kentucky may practice before the commission.

(4) [A person who is not authorized to practice before the commission as an attorney under subsection (3) of this section may practice before the commission as a representative of a party if he is a party to the case.]

(5) Entry of appearance. A representative of a party shall enter an appearance in a proceeding under these rules by:

(a) Signing the first document filed with the commission on behalf of a party [the party with the commission];

(b) Filing a written entry of appearance with the commission; or

(c) With the permission of the hearing officer, orally entering an appearance in open hearing.

(5) [(6)] Withdrawal of appearance. A representative [Any representative of a party] desiring to withdraw his appearance shall file a motion with the commission. The motion to withdraw may, in the discretion of the hearing officer, be denied if [where it is] necessary to avoid undue delay or prejudice to the rights of a party.

Section 3. Parties, Intervenor, and Amici Curiae. (1) Party status. A person [who is] named as a party, or [who is] permitted to intervene, is a party.

(2) Intervention. The procedure for intervention shall be governed by the provisions of KRS 13B.060. In denying a motion to intervene, the hearing officer may [alternatively] permit the movant to participate in the proceeding as amicus curiae.

(3) Participation as amicus curiae. A [Any] person may move to participate as amicus curiae in a proceeding before the commission. [Such] Participation as amicus curiae shall not be a matter of right,

but of the sound discretion of the hearing officer. A motion for participation as amicus curiae shall set forth the interest of the movant and show that granting [of] the motion will not unduly delay or prejudice the adjudication of the issues. If the hearing officer permits amicus curiae participation, his order shall specify the schedule for filing and replying to the [time within which such] amicus curiae memorandum, brief, or other pleading [must be filed and the time within which a reply may be made]. The movant may [conditionally] attach its memorandum, brief, or other pleading to its motion for participation as amicus curiae.

Section 4. Commencement of Action. (1) An action shall be instituted by filing with the commission a verified complaint which shall contain the following information:

[(4)](a) The name, address, and license number [and address] of the alleged violator;

(b) If the alleged violator is a corporation, the address and license number of the corporation and [along with] the name and address of the process agent [shall be provided];

(c) [(2)] The section of the statutes or administrative regulations alleged to have been violated and the minimum and maximum penalties provided for the [said] violation;

(d) [(3)] A statement of the factual basis for the department's action and [along with] a statement of issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and arguments;

(e) [(4)] The history of the alleged violator's previously adjudicated violations before the commission or its predecessor;

(f) [(5)] Any supporting documents addressed [set forth] in the statement; and

(2) [(6)] The complaint shall be filed with the Mine Safety Review [commission at the office of the] Commission, [located at] 132 Brighton Park Boulevard, Frankfort, Kentucky. At the time of filing, the complaint [(4)] shall be assigned a case number, which shall be used in [all] future proceedings of the matter.

Section 5. Probable Cause Hearing; Notice of Hearing. (1) Upon receipt of a verified complaint, the commission shall place the complaint on its agenda for a probable cause hearing to be reviewed at the next regularly-scheduled meeting of the commission, or as soon as practicable.

(a) The probable cause hearing shall not be adversarial in nature. Testimonial evidence shall [will] not be taken. The determination of probable cause shall be based upon the content [four corners] of the verified complaint alone.

(b) If the commission finds that probable cause exists, it shall issue an order in accordance with KRS 351.195(3) [setting the matter for hearing no sooner than thirty (30) days after acting on the complaint].

(c) The commission shall dismiss a complaint if [any complaint where] it does not find probable cause that a violation has occurred. The [Such] dismissal shall be without prejudice. The commission shall notify the Commissioner and general counsel of the Department of Mines and Minerals of its decision.

(2) [Emergency hearings may be set at the discretion of the commission upon a showing of an emergency.]

(3) If an order setting the matter for hearing is issued by the commission, it shall mail a notice of hearing to the following:

(a) The Commissioner of the Department of Mines and Minerals;

(b) General counsel for the Department of Mines and Minerals; and

(c) The respondent named in the verified complaint at the address shown in the complaint.

(3) [(4)] The notice of hearing shall be sent by mail, return receipt requested, in compliance with KRS 13B.050, [or service of process as provided in Civil Rule 4].

Section 6. Code of Conduct. The commissioners shall adhere to the Judicial Code of Conduct as required by KRS 351.1041(5).

Section 7. Answer of the Respondent. (1) The respondent shall file a response to the complaint with the commission within twenty (20) days of receiving the notice of hearing, [setting forth his [any] defenses to the complaint, or mitigating circumstances to the alleged]

offenses]. The response shall:

- (a) Set forth the defenses to the complaint;
- (b) State mitigating circumstances; and
- (c) ~~[(b)]~~ Admit or deny each assertion in the complaint; or

1. If appropriate, state that the respondent is without knowledge or information sufficient to form a belief as to the truth of an assertion; and

2. A statement under subparagraph 1 of this paragraph shall be treated as a denial.

(2) The original of the response shall be kept on file with the commission. ~~and~~ Copies shall be mailed to the Commissioner and general counsel of the Department of Mines and Minerals.

Section 8. General Requirements for Pleadings and Other Documents. (1) Where to file. The original copy of all documents shall be filed with the commission. Documents filed with the commission shall be addressed to the general counsel and mailed or delivered to the Mine Safety Review Commission, 132 Brighton Park Blvd., Frankfort, Kentucky 40601. Copies shall be sent to all parties in a case, and as well as to the hearing officer assigned to the case.

(a) The filing of complaints or other initiating documents shall be by personal delivery, including courier service, or by registered or certified mail, return receipt requested.

(b) ~~[(All)]~~ Subsequent documents ~~[that are]~~ filed with the commission may be filed by first class mail, express mail, facsimile transmission, or personal delivery. Express mail includes delivery by a third-party commercial carrier.

(c) Filing ~~[When filing is]~~ by personal delivery, mail, or facsimile transmission, ~~[filing]~~ is effective upon receipt.

(d) A document filed by facsimile transmission shall be placed in the United States mail on the same day as transmission. ~~[When filing is by mail, filing is effective upon mailing.]~~

1. Exceptions include:

- a. Petition for discretionary review;
- b. Petition for review of temporary reinstatement order;
- c. Motion for an extension of time; and
- d. Motion to exceed page limit.

2. Documents listed in subparagraph 1 of this paragraph are effective upon receipt.

~~(e) Filing by facsimile transmission is permissible and is effective upon receipt.]~~

(2) Required information.

(a) ~~[(All)]~~ Documents shall be legible and shall clearly identify the filing party by name on the cover page.

(b) ~~[(All)]~~ Documents filed with the commission shall be accompanied by a statement setting forth the date and manner of service.

(c) ~~[(All)]~~ Documents shall include the assigned docket number, page numbers, and the filing person's address and telephone number. Written notice of a ~~[any]~~ change in the address or telephone number shall be given promptly to the commission, the hearing officer, and all other parties.

(3) Number of copies. The original document and four (4) copies shall be filed with the commission. ~~[When filing is by facsimile transmission, the original document and four (4) nonfacsimile copies shall be filed with the commission within three (3) business days of the facsimile transmission.]~~

Section 9. Computation of Time. In computing a ~~[any]~~ period of time prescribed by this administrative regulation ~~[these rules]~~, the day from which the designated period begins to run shall not be included. The last day of the period ~~[so computed]~~ shall be included unless it is a Saturday, Sunday, or state holiday, in which event the period runs until the end of the next business day.

Section 10. Extensions of Time. (1) The time for filing or serving a ~~[any]~~ document may be extended for good cause shown. A motion requesting an extension of time shall be received no later than three (3) days prior to the expiration of the time allowed for filing or serving ~~[the filing or serving of]~~ the document.

(2) An extension of time may be granted even though the request was filed after the designated time for filing has expired if:

- (a) Exigent circumstances exist; and

(b) The requesting party shows, in writing, the reason for the party's failure to make the request before the prescribed time expired. [In exigent circumstances;

~~(a) An extension of time may be granted even though the request was filed after the designated time for filing has expired; and~~

~~(b) The party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired.] [Extensions of Time. The time for filing or serving any document may be extended for good cause shown. A motion requesting an extension of time shall be received no later than three (3) days prior to the expiration of the time allowed for the filing or serving of the document. In exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired.]~~

Section 11. Motions. (1) An application for an order shall be by motion which, unless made during a hearing or a prehearing conference, shall be made in writing and shall set forth the relief or order sought.

(2) A party opposing a written motion shall file a statement in opposition within [A statement in opposition to a written motion may be filed by any party within] ten (10) calendar days after service upon the party. Unless otherwise ordered, oral argument on motions will not be heard.

Section 12. Withdrawal of a Pleading. A party may withdraw a pleading at any stage of a proceeding with the approval of the commission or a hearing officer.

Section 13. Consolidation of Proceedings. The commission or a hearing officer may ~~[at any time]~~, upon their own ~~[motion]~~ or a party's motion, order the consolidation of proceedings that involve similar issues.

Section 14. ~~[A hearing officer will be assigned to each case and shall conduct the hearing in accordance with KRS 13B.080-13B.130.]~~

Section 15. ~~[Hearing Sites. Each case shall be assigned a hearing site by order of the Hearing Officer giving due regard to:~~

~~(1) The convenience and necessity of the parties or their representatives and witnesses;~~

~~(2) The availability of suitable hearing facilities; and~~

~~(3) Other relevant factors. [All cases will be assigned a hearing site by order of the commission. The commission shall give due regard to the convenience and necessity of the parties or their representatives and witnesses, the availability of suitable hearing facilities, and other relevant factors.]~~

Section 16. Expedition of Proceedings. (1) A party may request expedition of the proceedings by oral motion, with concurrent notice to all parties, or may file and serve such motion by facsimile transmission. Oral motions for expedition of the proceedings shall be reduced to writing and filed with the commission within twenty-four (24) hours of the making of the motion.

~~(2) In the event an emergency hearing is granted, it shall be conducted in accordance with KRS 13B.125.]~~

Section 15. ~~[14.]~~ Prehearing Conferences. Prehearing conferences shall be conducted in accordance with KRS 13B.070.

Section 16. ~~[14.]~~ Powers of Hearing Officers. A hearing officer is empowered to act in accordance with the provisions of KRS Chapter 13B. ~~[Subject to these rules, a hearing officer is empowered to:~~

~~(1) Administer oaths and affirmations;~~

~~(2) Issue subpoenas authorized by law;~~

~~(3) Rule on offers of proof and receive relevant evidence;~~

~~(4) Order depositions to be taken;~~

~~(5) Regulate the course of the hearing;~~

~~(6) Hold conferences for the settlement or simplification of the issues;~~

~~(7) Dispose of procedural requests or similar matters;~~

~~(8) Make decisions in the proceedings before him, provided that he shall not be assigned to make a final decision; and~~  
~~(9) Take other action authorized by these rules, or by KRS Chapter 13B.]~~

Section 17. ~~[49.]~~ Discovery. Discovery shall be conducted in accordance with KRS 13B.080(3). ~~[(4) Methods. Parties may obtain discovery by one (1) or more of the following methods:~~

- ~~(a) Depositions upon oral examination or written questions;~~
- ~~(b) Written interrogatories;~~
- ~~(c) Requests for production of documents or objects; or~~
- ~~(d) Requests for permission to enter upon property for inspecting, copying, photographing, and gathering information.~~
- ~~(2) Scope of discovery. Parties may obtain discovery of any relevant, non-privileged matter that is admissible evidence or appears likely to lead to discovery of admissible evidence.~~
- ~~(3) Limitation of discovery. Upon motion by a party or by the person from whom discovery is sought, the hearing officer may, for good cause shown, limit discovery to prevent undue delay or to protect a party or person from oppression or undue burden or expense.~~

~~(4) Depositions. Any party, without leave of the hearing officer, may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories. If the parties are unable to agree, the time, place, and manner of taking depositions shall be governed by order of the hearing officer.~~

~~(5) Interrogatories and requests for production, entry or inspection. Any party, with leave of the hearing officer, may serve the following documents upon another party:~~

~~(a) Written interrogatories~~

~~(b) Requests for production, entry or inspection.~~

~~(6) A party served with interrogatories or a request for production, shall answer each interrogatory or request separately and fully in writing, under oath, within twenty-five (25) calendar days of service, unless the proponent of the interrogatories or request for production agrees to a longer time. A party objecting to an interrogatory or request for production shall state the basis for the objection in its response. The hearing officer may order a shorter or longer time period for responding.]~~

Section 18. ~~[20.]~~ Failure to Cooperate in Discovery. Upon the failure of any person, including a party, to respond to a discovery request, or upon an objection to such a request, the party seeking discovery may file a motion with the hearing officer requesting an order compelling discovery pursuant to KRS 13B.080(3). ~~[If any person, including a party, fails to comply with an order compelling discovery, the hearing officer may make such orders with regard to the failure as are just and appropriate, including deeming as established the matters sought to be discovered or submitting a recommended order dismissing the proceeding in favor of the party seeking discovery.]~~ For good cause shown the hearing officer may excuse an objecting party from complying with the request.

Section 19. ~~[24.]~~ Subpoenas. The commission and its hearing officers ~~may [are authorized to]~~ issue subpoenas, on their own motion or on the oral or written application of a party, requiring the attendance of witnesses and the production of documents or physical evidence. A subpoena may be served by a person ~~[any person who is]~~ at least eighteen (18) years of age. A subpoena may also be served by registered or certified mail, return receipt requested, ~~with [but, in such case, any] risk of delivery [is] on the serving party.~~ A copy of the subpoena bearing a certificate of service shall be filed with the commission ~~[or the hearing officer].~~

(1) A subpoena shall be enforced in accordance with KRS 13B.080(3). ~~[Any person served with a subpoena may move within five (5) days of service, or at the hearing, whichever is sooner, to revoke or modify the subpoena. The commission or the hearing officer, as appropriate, shall revoke or modify the subpoena if it seeks information outside the proper scope of discovery, or if it does not describe with sufficient particularity the evidence required to be produced, or if for any reason it is found to be invalid or unreasonable. The commission or the hearing officer shall set forth a concise statement of the grounds for such ruling.]~~

(2) If a person fails ~~[Upon the failure of any person]~~ to comply

with an order to testify or with a subpoena issued by the commission ~~[or the hearing officer], the commission may [or the hearing officer's general counsel at the request of the hearing officer or at the direction of the commission, may undertake to]~~ initiate proceedings for the enforcement of the subpoena pursuant to KRS 13B.080(3).

(3) The person requesting the subpoenas shall bear the cost of serving the subpoenas, ~~[paying witness fees and expenses].~~ The commission shall bear the cost of witnesses subpoenaed on its behalf.

Section 20. ~~[22.]~~ Continuance; Proceedings in Absentia. The commission shall not postpone a case which has ~~[(1) It is the policy of the commission not to postpone cases which have] been scheduled for hearing, absent good cause.~~ A request ~~[by a party or attorney prosecuting the allegations of the complaint]~~ for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer.

~~[(2) Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.]~~

Section 21. ~~[23.]~~ Settlement by Informal Proceedings. (1) ~~In accordance with KRS 13B.070(3), the commission, through counsel may, at any time during the action [this process], enter into informal proceedings with the respondent [individual who is the subject of the verified complaint] for the purpose of appropriately dispensing with the matter.~~

(2) An agreed order or settlement ~~shall be signed by the parties and filed with the commission for final decision. [Reached through this process shall be approved by the commission and signed by the individual who is the subject of the complaint and the chairman.]~~

(3) The commission may employ mediation as a method of resolving the matter informally.

Section 22. ~~[24.]~~ Rules of Evidence. (1) Receipt of evidence shall be governed by the provisions of KRS 351.194(3) and 13B.090. ~~[The commission shall not be bound by the technical rules of evidence as applied in civil cases in the circuit courts of the Commonwealth of Kentucky.]~~

~~(2) The commission may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law.]~~

(2) ~~[(3)]~~ Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the commission is satisfied of its genuineness and accuracy.

(3) A tangible item may be received into evidence without the necessity of establishing a technical legal chain of custody if the board is satisfied that the item is:

~~(a) What it is represented to be; and~~

~~(b) In substantially the same condition as it was at the time of the events under consideration.~~

~~(4) [Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.]~~

~~(5) The commission shall exclude evidence [retain the discretion to exclude any evidence that] it considers to be unreliable, incompetent, irrelevant, immaterial, or unduly repetitious.~~

Section 23. ~~[25.]~~ Retention of Exhibits. Retention of exhibits shall be in accordance with KRS 13B.130. ~~The commission or the hearing officer may permit the withdrawal of original exhibits:~~

~~(1) Prior to the conclusion of the hearing;~~

~~(2) Upon request and after notice to the parties; and~~

~~(3) If true copies are substituted, if practical, for the originals. [The withdrawal of original exhibits may be permitted by the commission or the hearing officer, prior to the conclusion of the hearing, upon request and after notice to the other parties, if true copies are substituted, where practical for the originals.]~~

Section 24. [26.] Proposed findings, conclusions, and orders shall be made in accordance with KRS 13B.090.

Section 25. [27.] The commission shall make a decision that constitutes the final disposition of the proceedings in accordance with KRS 13B.120. If a decision is announced orally it shall be reduced to writing. An order by the commission approving a settlement proposal is a final decision of the commission.

Section 26. [28.] Ex Parte Communications. [(4)] For purposes of this section, the following definitions shall apply:

(a) "Ex parte communication" means an oral or written communication not on the public record concerning any matter or proceeding with respect to which reasonable prior notice to all parties has not been given. A status or informational request does not constitute an ex parte communication.

(b) "Status or informational request" means a request for a status report on any matter or proceeding or a request concerning filing requirements or other docket information.

(c) "Merits of a case" which shall be broadly construed by the commission, includes discussion of the factual or legal issues in a case or resolution of those issues.

(2) Prohibited ex parte communications are established [set forth] in KRS 13B.100.

BAYARD V. COLLIER, Chair

APPROVED BY AGENCY: April 11, 2002

FILED WITH LRC: April 11, 2002 at 2 p.m.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Hospitals and Outpatient Facilities Services**  
**(As Amended at ARRS, May 14, 2002)**

**907 KAR 1:015. Payments for hospital outpatient services.**

RELATES TO: KRS 205.520, 42 CFR 440.2, 440.20(a)

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 205.560, 205.637, 42 USC 1396(a), (b), (d)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for hospital outpatient services.

Section 1. Definition. "Department" means the Department for Medicaid Services or its designee.

Section 2. Outpatient Hospital Services. (1) For services provided on or after March 15, 2001, the Department for Medicaid Services shall reimburse a participating in-state hospital for outpatient services:

(a) On an interim basis by multiplying the hospital's Medicaid-billed outpatient service charges by a ratio determined by dividing its Medicaid-allowable cost of covered outpatient services from its most recently filed and reviewed cost report by the hospital's Medicaid-billed charges for covered outpatient services for the same cost report period; and

(b) With a year-end settlement to the lower of the hospital's Medicaid-allowable cost of covered outpatient services or Medicaid-allowable charges for covered outpatient services.

(2) [Effective July 1, 2001, a participating out-of-state hospital providing outpatient services exceeding \$100,000 in paid claims for services provided for the period July 1, 1999 to June 30, 2000, shall submit to the department a copy of the Medicare cost report and any specific supplemental schedules required by their state. Reimbursement shall be determined based on a cost-to-charge ratio from the most recent Medicare cost report filed for the hospital's fiscal year end. The cost-to-charge ratio shall be determined as specified

in subsection (1)(a) of this section for the rate effective July 1, 2001. An interim rate shall be paid for the period July 1, 2001 to September 1, 2001 or until the cost report is received. The interim rate shall be the Kentucky statewide average cost-to-charge ratio for in-state hospitals for the fiscal period.

(3) By March 1, 2002, and continuing annually, out-of-state hospitals providing outpatient services exceeding \$100,000 in paid claims for services provided during the preceding year shall provide the department a copy of their most recent Medicare cost report which shall be used to determine a cost-to-charge ratio to set the interim rate effective for the subsequent July 1 rate period.

(a) The \$100,000 threshold shall be determined from the amount paid through December 31 for services provided during the immediately preceding state fiscal year ending June 30. Hospitals required to submit a Medicare cost report shall be notified by the department in writing by January 31.

(b) The cost report shall be due before March 1. A thirty (30) day extension for filing the cost report may be granted by the department if Medicare grants an extension or if catastrophic circumstances exist.

(c) Failure to provide the required cost report in the allowed period shall result in a reduction of future payments to the lesser of the cost-to-charge ratio determined from the hospital's most recently submitted cost report, or the Kentucky statewide average rounded to the nearest percentage for in-state hospitals until the cost report is received and reviewed by the department.

(d) The interim rate shall be subject to year-end cost settlement specified in subsection (1)(b) of this section.

(3) [(4)] A participating out-of-state hospital with \$100,000 or less in paid claims for outpatient services provided for the period specified in subsection (2)(a) [(3)(a)] of this section shall not be required to submit a cost report. Reimbursement shall be the Kentucky statewide average cost-to-charge ratio for in-state hospitals, rounded to the nearest percentage, adjusted annually.

(4) [(5)] Charges or costs shall not be transferred between a hospital's [(the)] inpatient and outpatient service units.

(5)(a) [(6)] Outpatient hospital laboratory services shall be reimbursed at the Medicare-established rate in accordance with 907 KAR 1:029.

(b) [(7)] For outpatient hospital laboratory services with no established Medicare rate, reimbursement shall be sixty-five (65) percent of Medicaid-billed charges with no settlement to the lower of cost or charges.

Section 3. Supplemental Payments. (1) In addition to a payment received in accordance with Section 2 of this administrative regulation, a nonstate government hospital, as defined in 42 CFR 447.321(2), whose county has entered into an intergovernmental agreement with the Commonwealth shall receive a quarterly supplemental payment in an amount equal to the difference between the payments made in accordance with Section 2 of this administrative regulation and the maximum amount allowable under 42 CFR 447.321.

(2) A payment made under this section [of this administrative regulation] shall:

(a) Not be subject to the cost-settlement provisions established in Section 2 of this administrative regulation; and

(b) Apply to a service provided on or after April 2, 2001.

Section 4. Appeal Rights. A hospital may appeal a department decision involving the application of this administrative regulation to the hospital's reimbursement in accordance with 907 KAR 1:671. [2. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.]

MIKE ROBINSON, Commissioner

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: February 22, 2002

FILED WITH LRC: March 14, 2002 at 4 p.m.



**CABINET FOR FAMILIES AND CHILDREN**  
 Department for Community Based Services  
 Division of Policy Development  
 (As Amended at ARRS, May 14, 2002)

**921 KAR 2:060. Delegation of power for oaths and affirmations.**

RELATES TO: KRS 205.170(1), 7 CFR 273.22(f)(4) [45 CFR 205.32], 42 USC 601 to 619 [et seq.]  
 STATUTORY AUTHORITY: KRS 194B.050(1), 205.170(1), 205.200, 42 USC 601 to 619 [et seq.] [EO 96-862]  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. KRS 205.200 requires the Cabinet for Families and Children to administer the public assistance program in conformity with the Public Assistance titles of the Social Security Act, its amendments, and other federal acts and regulations, including 42 USC 601 to 619, and to provide supplemental payments to persons who are aged, blind, or have a disability. This administrative regulation establishes the designation of certain employees by the secretary of the cabinet to administer oaths and affirmations, in conformity with KRS 205.170(1). [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] [The Cabinet for Families and Children is required to administer the Public Assistance (shall administer a money payment) Program under 42 USC 601 et seq., Kentucky Transitional Assistance Program (K-TAP), and provide supplemental payments to persons who are aged, blind or have a disability. [KRS 205.170(1) authorizes the Secretary for Families and Children or his duly authorized representative to administer oaths and affirmations to obtain information from an applicant or recipient in the administration of the Aid to Families with Dependent Children now called Kentucky Transitional Assistance Program (K-TAP) and state supplementation programs.] This administrative regulation sets forth the designation of certain employees by the secretary of the cabinet to administer oaths and affirmations to an applicant or a recipient of a money grant in limited situations in conformity with KRS 205.170(1).]

Section 1. Specific Worker Designation. The following classifications of employees shall be designated as duly authorized representatives of the Secretary of the Cabinet for Families and Children to administer an oath or affirmation to an applicant or recipient:

- (1) A field services supervisor;
- (2) A service region administrator associate [field services manager]; and
- (3) A service region [regional] administrator.

Section 2. Purpose. An oath or affirmation shall be administered by a designated representative to an applicant or recipient to:

- (1) Obtain a sworn statement regarding a claim that a check issued through a cabinet program has been:
  - (a) Lost;
  - (b) Misplaced; or
  - (c) Stolen;
- (2) Request a replacement check; or
- (3) View a check endorsement.

Section 3. Process. (1) An affidavit shall be used if:

- (a) A check is reported lost or stolen to request a replacement check within six (6) months of intended receipt; or
  - (b) A check endorsement is viewed.
- (2) If the payee reports nonreceipt, loss or theft of a check, the payee shall come into the office to complete an affidavit within four (4) work days of reporting nonreceipt of the check. This process shall place a stop payment on the check.
- (3) If the original check has been cashed, a photocopy of the cashed check shall be forwarded to the local office.

- (a) The payee shall view the endorsement; and
- (b) If the signature is not that of the payee, the payee shall sign the affidavit stating:
  1. The signature on the photocopy is not his signature; and
  2. He received no benefit from the cashing of the check.
- (4) The affidavit shall also be used to request reissuance of the check in question.
- (5) The time limitation that a lost or stolen check may be replaced shall not exceed six (6) months from the date of intended receipt.

Section 4. Incorporation by Reference. (1) "PAFS-60 Affidavit, edition 06/02" is incorporated by reference. [The following material is incorporated by reference:

- (a) "PA-60 Affidavit", (5/97 Edition), Department for Community-Based Services; and
- (b) "PA-61 Notice of Returned Check and Authorization for Disposition", (7/94 Edition), Department for Community-Based Services.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Families and Children, 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

APPROVED BY AGENCY: March 11, 2002  
 FILED WITH LRC: March 15, 2002 at 10 a.m.

**CABINET FOR FAMILIES AND CHILDREN**  
 Department for Community Based Services  
 Division of Policy Development  
 (As Amended at ARRS, May 14, 2002)

**921 KAR 3:030. Application process.**

RELATES TO: KRS 116.048 [194B.050(1)], 7 CFR 273.2, 273.10, 42 USC 1973gg-10, 7 USC 2011-2029  
 STATUTORY AUTHORITY: KRS [116.048,] 194B.050(1), 7 USC 2020(e)(2)(B)(ii), (iii), (iv)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) requires the secretary of the Cabinet for Families and Children to promulgate administrative regulations, develop policies, and operate programs necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth. 7 USC 2011 to 2029 authorizes the cabinet to administer a Food Stamp Program and prescribes the manner in which the program shall be implemented. KRS 116.048(1) designates the cabinet as a voter registration agency in accordance with 42 USC 1973gg-10. This administrative regulation establishes the application process used by the cabinet in the administration of the Food Stamp Program and the policy and procedures necessary to provide an eligible Food Stamp Program participant the opportunity to register, or decline to register, to vote. [The Cabinet for Families and Children shall administer a Food Stamp Program as prescribed by 7 USC 2011-2029. KRS 194B.050(1) provides that the secretary shall develop policies and operate programs concerned with the welfare of citizens of the Commonwealth. This administrative regulation sets forth the application process used by the cabinet in the administration of the Food Stamp Program. KRS 116.048 designates the cabinet to have responsibility for the administration of the Food Stamp Program as a voter registration agency in accordance with 42 USC 1973gg-10. This administrative regulation sets forth policy and procedures necessary to provide an eligible Food Stamp Program participant the opportunity to register, or to decline from registering, to vote.]

Section 1. Right to Apply or Reapply. (1) An individual shall have the right to apply or reapply for food stamp benefits on the same day that the household first contacts the food stamp office in person during office hours.



(2) The cabinet shall make the application process readily accessible to a household.

(3) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for a person who is:

- (a) Deaf; or
- (b) Hard of hearing.

(4) Interpreter services shall be provided for a non-English speaking individual, utilizing procedures and forms specified by 920 KAR 1:070.

(5) An application shall be considered to have been filed if ~~when~~:

(a) A KIM-100 ~~[An application]~~ form containing the name, address and signature of the applicant is received by the food stamp office;

(b) The applicant or representative is interviewed;

(c) Required information on the application is provided to the food stamp office and verified; and

(d) The application is received by the appropriate office.

Section 2. Who May Sign an Application. An application for food stamps shall be signed by:

(1) An adult or emancipated child who is a responsible member of the household; or

(2) The household's authorized representative.

Section 3. Where an Application is Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in any office of the Department for Community-Based Services and processed in the county in which an applicant resides.

(2) A concurrent application for Supplemental Security Income, or SSI, (SSI) and Food Stamps shall be filed in the service area office of the Social Security Administration.

Section 4. Prompt Action on an Application. The cabinet shall provide an eligible household, that completes the initial application process, an opportunity to participate as soon as possible. The cabinet shall not provide an opportunity to participate later than [but not later than]:

(1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or

(2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. Expedited Service. A household eligible for expedited services shall be:

(1) A household in which:

- (a) Monthly gross income is less than \$150; and
- (b) Liquid resources do not exceed \$100; or

(2) A destitute migrant or seasonal farm work household whose liquid resources do not exceed \$100; or

(3) A household for whom monthly rent or mortgage and actual utilities exceed the household's combined monthly gross income and liquid resources.

Section 6. Public Assistance Application Process. (1) A household in which every member is applying for Kentucky Transitional Assistance Program, or K-TAP, (K-TAP) shall be allowed to simultaneously apply for food stamp benefits. A single interview shall be conducted for both programs.

(2) Time standards specified in Section 4 of this administrative regulation shall apply to a public assistance application.

(3) A household in which every member receives, or is authorized to receive, SSI shall be considered categorically eligible unless the entire household is:

- (a) Institutionalized; or
- (b) Disqualified from receiving food stamps.

(4) A household in which any member receives, or is authorized to receive cash, in-kind, or other benefits funded under temporary assistance for needy families shall be considered categorically eligible unless the entire household is:

- (a) Institutionalized; or
- (b) Disqualified from receiving food stamps.

(5) A categorically eligible household shall not be required to verify the following eligibility factors:

- (a) Resources;
- (b) Gross and net income limits;
- (c) Social Security number information;
- (d) Sponsored alien information; and
- (e) Residency.

Section 7. Joint SSI and Food Stamp Application Process. A household in which every member is an applicant or recipient of SSI shall be allowed to simultaneously apply for both SSI and food stamps at the appropriate Social Security Administration office.

Section 8. Voter Registration. (1) In accordance with KRS 116.048 and 42 USC 1973gg-10, an applicant or recipient ~~[meeting the following criteria]~~ shall be provided the opportunity to complete an application to register to vote or update his current voter registration if the applicant is:

(a) ~~[Be]~~ Age eighteen (18) or over; ~~[and]~~

(b) ~~[Be]~~ Present in the office at the time of the interview or when a change of address is reported; and

(c) Not ~~[be]~~ registered to vote or not registered to vote at his current address.

(2) An individual not included in the assistance application shall not be registered to vote in this process, including an:

- (a) Authorized representative; or
- (b) Individual acting as a responsible party.

(3) An individual providing a voter registration service who seeks to unlawfully influence an applicant's political preference or party registration as prohibited by KRS 116.048(4) may be fined or imprisoned, not to exceed five (5) years, or both.

(4) A form and information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(5) Only a Board of Elections official may view a form and information utilized directly in the voter registration process.

(6) Completion of the Voter Registration Form shall be [is] only an application to apply to register to vote. The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the applicant.

~~[(7) Forms necessary to register a Food Stamp Program participant to vote are incorporated by reference in this administrative regulation.]~~

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KIM-77, Intent to Apply[<sup>2</sup>], edition 8/01";
- (b) "KIM-100, KAMES Application[<sup>2</sup>], edition 6/02" ~~[8/01]~~;
- (c) "KIM-100, Supplement A, Representative/Interested Party[<sup>2</sup>], edition 11/00";
- (d) "KIM-100, Supplement B, Utility/Shelter Information[<sup>2</sup>], edition 4/99";
- (e) "KIM-100, Supplement C, Additional Members/Striker and Boarder Information[<sup>2</sup>], edition 11/00";
- (f) "KIM-100, Supplement D, Farm/Self-Employment/Rental Income[<sup>2</sup>], edition 8/00";
- (g) "KIM-100, Supplement E, Vehicles[<sup>2</sup>], edition 6/02" ~~[4/00]~~;
- (h) "KIM-100, Supplement F, Emergency Shelter/Foster Care[<sup>2</sup>], edition 11/00";
- (i) "KIM-100, Supplement G, Member General Information[<sup>2</sup>], edition 6/02" ~~[4/99]~~;
- (j) "KIM-100, Supplement H, IM Alien Information[<sup>2</sup>], edition 11/00";
- (k) "KIM-100, Supplement I, State Supplementation/Pass Through[<sup>2</sup>], edition 6/02" ~~[4/00]~~;
- (l) "KIM-100, Supplement J, Long Term Care[<sup>2</sup>], edition 4/99";
- (m) "KIM-100, Supplement L, General Deprivation[<sup>2</sup>], edition 11/00";
- (n) "KIM-100, Supplement M, Incapacity/Unemployment[<sup>2</sup>], edition 4/99";
- (o) "KIM-100, Supplement N, Deprivation[<sup>2</sup>], edition 11/00";
- (p) "KIM-100, Supplement P, DCSE Cooperation/Absence Verification[<sup>2</sup>], edition 11/00";
- (q) "KIM-100, Supplement PP, AP Referral[<sup>2</sup>], edition 11/00";
- (r) "KIM-100, Supplement Q, KWP/Work Registration[<sup>2</sup>], edition 6/02" ~~[4/99]~~;

- (s) "KIM-100, Supplement R, Earned Income[~~ed~~], edition 11/00";
- (t) "KIM-100, Supplement S, Unearned Income[~~ed~~], edition 11/00";
- (u) "KIM-100, Supplement SS, Lump Sum/Pass Income[~~ed~~], edition 11/00";
- (v) "KIM-100, Supplement T, Resources[~~ed~~], edition 6/02" [~~11/00~~];
- (w) "KIM-100, Supplement U, Medical Expenses[~~ed~~], edition 11/00";
- (x) "KIM-100, Supplement V, Health Insurance[~~ed~~], edition 11/00";
- (y) "KIM-100, Supplement W, KAMES-Integration Supplement - Lock-In & KenPAC[~~ed~~], edition 11/00";
- (z) "KIM-100, Supplement X, IM Nonmember[~~ed~~], edition 4/99";
- (aa) "KIM-100, Supplement XX, KAMES-Integration Supplement - FS Nonmember[~~ed~~], edition 11/00";
- (bb) "KIM-100, Supplement Y, Student Information[~~ed~~], edition 11/00";
- (cc) "PAFS-706, Voter Registration Rights and Declination[~~ed~~], edition 11/00";
- (dd) "Voter Registration Application for U.S. Citizens Only[~~ed~~], edition 4/99".

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DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 11, 2002

FILED WITH LRC: March 15, 2002 at 10 a.m.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community Based Services**  
**Division of Policy Development**  
**(As Amended at ARRS, May 14, 2002)**

**921 KAR 3:050. Claims and additional administrative provisions.**

RELATES TO: 7 CFR 272.1, 272.5, **272.6**, 273.16, 273.17, 273.18, 26 CFR 301.6402-6 [~~et seq.~~], 31 CFR 5.23 to 5.38 [~~et seq.~~], 56 FR 41325-31, 57 FR 39176-77, 7 USC 2011-2029

STATUTORY AUTHORITY: KRS 194B.050(1), 7 USC 2020

NECESSITY, FUNCTION, AND CONFORMITY: 7 USC 2011 to 2029 requires the Cabinet for Families and Children to administer a Food Stamp Program. KRS 194B.050(1) requires [provides that] the secretary to promulgate administrative regulations, develop policies, and operate programs necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth [shall develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth]. This administrative regulation establishes recipient claims and collections provisions, and 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 applicant or participant in any aspect of program administration for reasons of age, race, color, sex, disability, religious creed or national origin.

Section 2. Restoration of Lost Benefits. (1) Benefits shall be restored to a household if the 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 unpaid or

suspended claim the household may have.

Section 3. Program Informational Activities. (1) A low-income or disadvantaged household shall be informed of the availability of the program and program rights and responsibilities through program informational activities including posters and pamphlets from the Food and Nutrition Service.

(2) Other programs that a household 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 and Classification of a Claim Against a Household. (1) The following are responsible for paying a recipient claim pursuant to 921 KAR 3:010:

- (a) Each person who was an adult member of the household when the overpayment or trafficking occurred;
- (b) A sponsor of an alien household member if the sponsor is at fault; or
- (c) A person connected to the household, such as an authorized representative, who actually traffics or otherwise causes an overpayment or trafficking.

(2) Pursuant to 921 KAR 3:010, a recipient claim shall be classified as an:

- (a) Inadvertent household error, **or IHE, [(IHE)]** claim;
- (b) Administrative error, **or AE, [(AE)]** claim; or
- (c) Intentional program violation, **or IPV [(IPV)]** claim.

Section 5. Calculating the Amount of a Recipient Claim. (1) For a recipient claim not related to trafficking, the cabinet shall:

(a) Calculate:

- 1. An IHE or AE claim back to twelve (12) months prior to when the cabinet became aware of the overpayment; and
- 2. An IPV claim back to the month the act of IPV first occurred, but not more than six (6) years prior to when the cabinet became aware of the overpayment; ~~and~~

(b) Determine the correct amount of food stamp benefits for each month that a household received an overpayment;

(c) Not apply the earned income deduction to the portion of earned income that a household failed to report in a timely manner, pursuant to Section 6 of this administrative regulation, if:

1. The claim is classified as an IPV or IHE; and

2. This act is the basis for a recipient claim; [if the claim is classified as an IPV or IHE, do not apply the earned income deduction to the portion of earned income that a household failed to report in a timely manner, pursuant to Section 6 of this administrative regulation, when this act is the basis for a recipient claim.]

(d) Subtract the correct amount of food stamp benefits from the benefits actually received and the answer shall be [is] the amount of the overpayment; and

(e) ~~[The cabinet shall]~~ Reduce the overpayment pursuant to paragraph (d) of this subsection, by the amount of electronic benefit transfer, **or EBT, [(EBT)]** benefits expunged from a household's EBT benefit account:

- 1. When the recipient claim is initially calculated; and
- 2. At each subsequent expungement until the balance of the claim is paid in full.

(2) For a recipient claim related to trafficking, the cabinet shall calculate the value of the trafficked food stamp benefits as determined by:

- (a) An individual's admission;
- (b) Adjudication; or
- (c) The documentation that forms the basis for the trafficking determination.

(3) The cabinet shall adjust the amount of a recipient claim as determined pursuant to subsections (1) and (2) of this section if a different amount is ordered by:

- (a) An administrative hearing official pursuant to:
  - 1. 921 KAR 3:060; or
  - 2. 921 KAR 3:070; or
- (b) A court.

(4) The cabinet shall not establish a recipient claim if it is deter-

mined that the claim referral is \$125 or less, unless:

(a) A household is currently participating in the Food Stamp Program; or

(b) The cabinet established or discovered the recipient claim through a quality control review.

Section 6. Acting on a Change in the Household's Circumstances. If ~~[(4)] [in a case involving]~~ a reported change ~~is involved~~, the cabinet shall determine the month the overissuance initially occurred as follows:

(1) ~~[(a)]~~ For an IHE claim, if the household failed to report a change in a circumstance within the required time frame:

(a) ~~[4.]~~ The first month affected by the household's failure to report shall be the first month that the change would have been effective had it been timely reported; and

(b) ~~[2.]~~ The first month of the established overissuance shall not be a month later than two (2) months from the month that the change in a household's circumstance occurred;

(2) ~~[(b)]~~ For an AE claim, if the household timely reported a change, but the cabinet did not act on the change within the required time frame:

(a) ~~[4.]~~ 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; and

(b) ~~[2.]~~ The first month of the established overissuance shall not be a month later than two (2) months from the month that the change in a household's circumstance occurred; or

(c) ~~[3.]~~ If a notice of action was required by the cabinet 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 ten (10) days:

1. ~~[a. Ten (10) days]~~ To report the change;

2. ~~[b. Ten (10) days]~~ For the caseworker to act on the change; and

3. ~~[c. Ten (10) days]~~ For the client to respond to the notice of action.

Section 7. Notification of a Claim. (1) The cabinet shall mail a household that is suspected to have incurred a recipient claim a notice of an appointment, form "KCA-1, General Claims Notice ~~[FS-04]~~", to discuss the potential claim to determine the classification of the claim, pursuant to Section 4 of this administrative regulation.

(2) If a household contacts the cabinet within ten (10) days of the date of the notice pursuant to subsection (1) of this section, the appointment shall be rescheduled.

(3) If a household fails to contact the cabinet or attend either appointment pursuant to subsections (2) or (3) of this section, the cabinet shall determine the classification and the amount of the recipient claim based on the information that is available to the cabinet.

(4) For a household that is participating in the Food Stamp Program, when the cabinet has determined the amount of a household's recipient claim, pursuant to Section 5 of this administrative regulation, the cabinet shall initiate collection action by mailing to a household one (1) of the following notices, which shall include a repayment agreement:

(a) For an AE recipient claim, form "KCA-1, General Claims Notice ~~[FS-02]~~";

(b) For an IHE recipient claim, form "KCA-1, General Claims Notice ~~[FS-04]~~";

(c) For an IPV recipient claim that is established by a household signing a "Voluntary Waiver of Administrative Disqualification Hearing", pursuant to 921 KAR 3:060, Section 8, form "KCA-1, General Claims Notice ~~[FS-06]~~";

(d) For an IPV recipient claim that is established by a household signing a "Deferred Adjudication Disqualification Consent Agreement", pursuant to 921 KAR 3:060, form "KCA-1, General Claims Notice ~~[FS-08]~~"; or

(e) For an IPV recipient claim that is established by an Administrative Disqualification Hearing, pursuant to 921 KAR 3:060, form "KCA-1, General Claims Notice ~~[FS-10]~~". ~~[H]~~

(5) Upon receipt of a notice pursuant to subsection (4) of this section, a household shall:

(a) Select a method of collection, pursuant to Section 10 of this administrative regulation, by completing the repayment agreement; and

(b) Return the form to the cabinet within ~~ten (10)~~ ~~[thirty (30)]~~ days from the date of the written notification.

(6) If the household fails to timely return a completed repayment agreement pursuant to subsection (5) of this section the:

(a) Claim shall be considered delinquent, pursuant to Section 8 of this administrative regulation; and

(b) Cabinet shall impose involuntary collection action pursuant to Section 10(1)(b) of this administrative regulation.

(7) For a household that is not participating in the Food Stamp Program, when the cabinet has determined the amount of a household's recipient claim, pursuant to Section 5 of this administrative regulation, the cabinet shall initiate collection action by mailing to a household one (1) of the following notices:

(a) For an AE recipient claim, form "KCA-1, General Claims Notice ~~[FS-03]~~";

(b) For an IHE recipient claim, form "KCA-1, General Claims Notice ~~[FS-05]~~";

(c) For an IPV recipient claim that is established by a household signing a "Voluntary Waiver of Administrative Disqualification Hearing", pursuant to 921 KAR 3:060, Section 8, form "KCA-1, General Claims Notice ~~[FS-07]~~";

(d) For an IPV recipient claim that is established by a household signing a "Deferred Adjudication Disqualification Consent Agreement", pursuant to 921 KAR 3:060, Section 9, form "KCA-1, General Claims Notice ~~[FS-09]~~"; or

(e) For an IPV recipient claim that is established by an Administrative Disqualification Hearing, pursuant to 921 KAR 3:060, form "KCA-1, General Claims Notice ~~[FS-11]~~".

(8) If a household that is discontinued from the Food Stamp Program and owes a recipient claim resumes participation in the program, the cabinet shall mail a "KCA-1, General Claims Notice" Form to the following types of households ~~[household one (1) of the following notices]~~:

(a) ~~[For an] AE recipient claim;~~

1. ~~Form "KCA-1, General Claims Notice ~~[FS-20]~~"; or~~

2. ~~Form "KCA-1, General Claims Notice ~~[FS-21]~~";~~

(b) ~~[For an] IHE recipient claim;~~

1. ~~Form "KCA-1, General Claims Notice ~~[FS-22]~~"; or~~

2. ~~Form "KCA-1, General Claims Notice ~~[FS-23]~~"; or~~

(c) ~~[For an] IPV recipient claim;~~

1. ~~Form "KCA-1, General Claims Notice ~~[FS-24]~~"; or~~

2. ~~Form "KCA-1, General Claims Notice ~~[FS-25]~~";~~

(9) The cabinet shall mail to a household form "KCA-1, General Claims Notice ~~[FS-12]~~", to notify a household:

(a) That a court has classified the overpayment as an IPV recipient claim; and

(b) Of the court ordered amount of the IPV recipient claim.

(10) If the cabinet determines through a subsequent review of the records that it has made an error in the computation of a recipient claim, the cabinet shall notify a household of the correct amount of the recipient claim by mailing to it form "KCA-1, General Claims Notice ~~[FS-29]~~".

(11) The cabinet shall notify a household that its claim is paid in full by mailing to the household form "KCA-1, General Claims Notice ~~[FS-30]~~".

Section 8. Delinquent Recipient Claims. (1) A recipient claim shall be considered delinquent if:

(a) The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or

(b) A payment arrangement has been established and a scheduled payment has not been made by the due date.

(2) The date of delinquency for a claim pursuant to subsection (1)(a) of this section is the due date on the initial written notification. The claim will remain delinquent until:

(a) Payment is received in full;

(b) A satisfactory payment agreement is negotiated; or

(c) Allotment reduction is invoked pursuant to Section 10(1)(b) of this administrative regulation.

(3) The date of delinquency for a claim pursuant to subsection (1)(b) of this section is the due date on the missed installment pay-

ment. The claim shall remain delinquent until:

- (a) Payment is received in full; or
- (b) Allotment reduction is invoked.
- (4) A claim shall not be considered delinquent if:
  - (a) Another claim for the same household is currently being paid either through an installment agreement or allotment reduction; and
  - (b) The cabinet expects to begin collection on the claim once the prior claim is settled.
- (5) A claim is not subject to the requirements for delinquent debts if the cabinet is unable to determine delinquency status because collection is coordinated through the court system.
- (6) A claim awaiting a fair hearing decision shall not be considered delinquent.
- (7) If a hearing official determines that a claim does, in fact, exist against the household, the cabinet shall:
  - (a) Renotify the household of the claim; and
  - (b) Base delinquency on the due date of the subsequent notice.
- (8) If a hearing official determines that a claim does not exist, the cabinet shall:
  - (a) Dispose of the recipient claim pursuant to Section 9(2) of this administrative regulation; and
  - (b) Notify the household by mailing to it form "KCA-1, General Claims Notice [ES-29]".

#### Section 9. Compromising, Terminating, and Writing-off Claims.

- (1) Except for a recipient claim that is established by a court of the appropriate jurisdiction, if requested by a household, the cabinet shall compromise a claim or a portion of a claim if it is reasonably determined that a household's economic circumstances dictate that the claim shall not be paid in three (3) years.
- (2) A claim shall be terminated and written off if:
  - (a) The cabinet finds that the claim is invalid, unless it is appropriate to pursue the overpayment as a different type of claim;
  - (b) The claim balance is twenty-five (25) dollars or less and the claim has been delinquent for ninety (90) days or more, unless other claims exist against the household resulting in an aggregate claim total of greater than twenty-five (25) dollars;
  - (c) All adult household members die;
  - (d) Pursuant to Section 5(4) of this administrative regulation, a recipient claim is \$125 or less;
  - (e) The claim is delinquent for three (3) years or more, unless the cabinet is able to pursue the claim through the Treasury Offset Program; or
  - (f) The cabinet is unable to locate the household.

#### Section 10. Collection Methods. (1) Allotment reduction.

- (a) A household that is participating in the Food Stamp Program may voluntarily elect to pay a recipient claim by reducing its monthly food stamp benefits through allotment reduction by the following amount:
  - 1. For an IPV claim, the amount reduced shall be the greater of twenty (20) dollars per month or twenty (20) percent of the household's monthly allotment or entitlement, unless the household agrees to a higher amount; or
  - 2. For an IHE or AE claim, the amount reduced shall be the greater of ten (10) dollars per month or ten (10) percent of the household's monthly allotment, unless the household agrees to a higher amount. ~~[ES-29]~~
- (b) If a household that is participating in the Food Stamp Program fails to timely return a completed repayment agreement pursuant to Section 7 of this administrative regulation, the cabinet shall invoke involuntary allotment reduction pursuant to paragraph (a)1 or 2 of this subsection. ~~[ES-29]~~
- (c) The cabinet shall not use additional involuntary collection methods against individuals in a household that is already having its benefit reduced unless:
  - 1. The additional payment is voluntary; or
  - 2. The source of the payment is irregular and unexpected such as a federal or state tax refund or lottery winnings offset.
- (2) A household may pay its claim using benefits from its EBT benefit account if the household provides the cabinet:
  - (a) Written permission by completing form "KCA-1, General Claims Notice [ES-29]"; or
  - (b) Oral permission for a one (1) time reduction with the cabinet

providing the household with a receipt of the transaction within ten (10) days.

(3) If the cabinet becomes aware of expunged EBT benefits, the cabinet shall adjust the amount of a household's recipient claim by subtracting the expunged EBT amount from the household's recipient claim balance.

(4) During the claim establishment and collection process, the cabinet shall:

- (a) Reduce restored benefits owed to a household by the amount of its outstanding recipient claim; and
- (b) Notify a household of the adjustment by mailing form "KCA-1, General Claims Notice [ES-29]".
- (5) The cabinet shall accept a lump sum payment for a claim, whether it represents full or partial payment. The payment may be in all of the collection methods.
- (6) If a household is not participating in the Food Stamp Program, the cabinet shall accept installment payments made for a recipient claim as part of a negotiated repayment agreement. If a household fails to submit a payment pursuant to the negotiated repayment schedule, the recipient claim shall become delinquent and shall be subject to additional collection methods.
- (7) The cabinet may employ other collection methods to collect a recipient claim, including:

- (a) Referral to a collection or other similar private and public sector agency;
- (b) Lottery offsets;
- (c) Wage garnishment; or
- (d) State income tax refund intercept.
- (8) The cabinet shall:
  - (a) Refer a recipient claim that is delinquent for 180 or more days to the Treasury Offset Program (TOP), unless the debtor is a member of a participating household that is having its allotment reduced to collect a recipient claim; and
  - (b) Remove a recipient claim from TOP if the:
    - 1. Food and Nutrition Service or Treasury instructs the cabinet to withdraw a recipient claim; or
    - 2. Cabinet discovers that the:
      - a. Debtor is a member of a food stamp household undergoing allotment reduction;
      - b. Recipient claim is paid up;
      - c. Recipient claim is disposed of through a:
        - (i) Hearing;
        - (ii) Termination; or
        - (iii) Compromise;
      - d. Recipient claim was referred to TOP in error; or
      - e. Debtor has made an arrangement with the cabinet to resume payment.

Section 11. Disclosure of Information. Use or disclosure of information including the address, Social Security number, and, if available, photograph obtained from an applicant household, exclusively for the Food Stamp Program, shall be restricted to the following individuals:

- (1) A person directly connected with the administration or enforcement of the provisions of:
  - (a) 7 USC 2011-2029;
  - (b) A federal assistance program; or
  - (c) A federally-aided state program that provides assistance, on a means-tested basis, to a low income household;
- (2) An employee of the Comptroller General's Office of the United States for audit examination authorized by a provision of law; and
- (3) A local, state or federal law enforcement official, upon his 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.
- (4) An individual directly connected with the verification of immigration status of aliens applying for food stamp benefits, through the

Systematic Alien Verification for Entitlements, or **SAVE**, [(SAVE)] Program, to the extent the information is necessary to identify the individual for verification purposes;

(5) An individual directly connected with the administration of the Child Support Program, pursuant to 42 USC 651 to 669b [et seq.], in order to assist in the administration of that program;

(6) Employees of the Secretary of Health and Human Services as necessary to assist in establishing or verifying eligibility or benefits pursuant to:

(a) 42 USC 401 to 434 [et seq.]; and

(b) 42 USC 1381 to 1383f [et seq.];

(7) A local, state, or federal law enforcement officer in the investigation of:

(a) A household member who is:

1. Fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony; or

2. Violating a condition of probation or parole imposed under a federal or state law; or

(b) A household member who has information necessary for the apprehension or investigation of another member who meet the criteria pursuant to paragraph (a) of this subsection.

Section 12. General Program Information. 921 KAR Chapter 3 shall be maintained in the cabinet central and local office for examination by a member of the public on a regular workday during regular office hours. A copy of an administrative regulation may be obtained from the cabinet. Federal laws and regulations shall be maintained by the cabinet central office and the Food and Nutrition Services and shall be available for inspection and copying.

Section 13. Retention of Records. (1) The cabinet shall retain 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.

(2) The cabinet shall retain fiscal records and accountable documents for three (3) years from the date of fiscal or administrative closure.

Section 14. Disaster Certification. The cabinet shall distribute emergency benefits to a household within a food stamp county determined to be a disaster area pursuant to:

(1) 42 USC 5122, authorized by the Food and Nutrition 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) 7 USC 2011-2029, authorized by the Food and Nutrition Service as a result of a lesser disaster, if:

(a) The emergency has resulted either from a natural or human occurrence that disrupted the commercial channels of food distribution; and

(b) The Food Stamp Program is operational.

Section 15. Incorporation by Reference. (1) "KCA-1, General Claims Notice, edition 6/02" [The following material] is incorporated by reference[;

(a) "KCA-1, General Claims Notice FS-01", edition 8/01;

(b) "KCA-1, General Claims Notice FS-02", edition 8/01;

(c) "KCA-1, General Claims Notice FS-03", edition 8/01;

(d) "KCA-1, General Claims Notice FS-04", edition 8/01;

(e) "KCA-1, General Claims Notice FS-05", edition 8/01;

(f) "KCA-1, General Claims Notice FS-06", edition 8/01;

(g) "KCA-1, General Claims Notice FS-07", edition 8/01;

(h) "KCA-1, General Claims Notice FS-08", edition 8/01;

(i) "KCA-1, General Claims Notice FS-09", edition 8/01;

(j) "KCA-1, General Claims Notice FS-10", edition 8/01;

(k) "KCA-1, General Claims Notice FS-11", edition 8/01;

(l) "KCA-1, General Claims Notice FS-12.2", edition 8/01;

(m) "KCA-1, General Claims Notice FS-20", edition 8/01;

(n) "KCA-1, General Claims Notice FS-21", edition 8/01;

(o) "KCA-1, General Claims Notice FS-22", edition 8/01;

(p) "KCA-1, General Claims Notice FS-23", edition 8/01;

(q) "KCA-1, General Claims Notice FS-24", edition 8/01;

(r) "KCA-1, General Claims Notice FS-25", edition 8/01;

(s) "KCA-1, General Claims Notice FS-28", edition 8/01;

(t) "KCA-1, General Claims Notice FS-29", edition 8/01;

(u) "KCA-1, General Claims Notice FS-30", edition 8/01; and

(v) "FESBT-6, Claims Repayment Request", edition 8/01.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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

APPROVED BY AGENCY: March 13, 2002

FILED WITH LRC: March 15, 2002 at 10 a.m.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community Based Services**  
**Division of Policy Development**  
**(As Amended at ARRS, May 14, 2002)**

**921 KAR 3:060. Administrative disqualification hearings and penalties.**

RELATES TO: 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82), 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82), [274.12,] 59 FR 44343-47, 7 USC 2015

STATUTORY AUTHORITY: KRS [Chapter] 13B.030, 194B.050(1), 7 CFR 271.4[274.12]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050(1) requires the secretary of the Cabinet for Families and Children to promulgate administrative regulations, develop policies, and operate programs necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth. 7 USC 2011 to 2029 authorizes the cabinet to administer a Food Stamp Program and prescribes the manner in which the program shall be implemented. 7 CFR 271.4 authorizes the cabinet to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from the fraudulent or nonfraudulent overissuances to participating households. KRS 13B.030 authorizes an agency head to exercise all powers conferred on an agency relating to the conduct of administrative hearings. This administrative regulation establishes the procedures used by the cabinet to determine if an act of intentional program violation has occurred and appropriate penalties that shall be applied. [The Cabinet for Families and Children shall administer a Food Stamp Program pursuant to 7 USC 2011 to 2029. KRS 194B.050(1) provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the procedures used by the cabinet to determine when an act of intentional program violation has occurred and appropriate penalties that shall be applied.]

Section 1. Administrative Disqualification Hearings. (1) Except as provided by subsection (3) [subsections (3) and (4)] of this section, an administrative disqualification hearing shall be initiated by the cabinet if [whenever] it has documented evidence to prove that a household member has committed an act of intentional program violation, pursuant to 921 KAR 3:010.

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.

(3) The cabinet may refer the claim to the following for investigation and prosecution by a court of competent jurisdiction, the:

(a) Cabinet for Health Services;

(b) Office of Inspector General, or OIG; or

(c) Office of the Attorney General, or OAG. [the Cabinet for Health Services, Office of Inspector General (OIG), or the Office of the Attorney General (OAG) as determined by the cabinet for investigation and prosecution by a court of the appropriate jurisdiction.] [If the aggregate amount of a food stamp intentional program violation, Kentucky Transitional Assistance Program, or Medical Assistance recipient claim is between \$1,000 and \$2,000, the cabinet shall refer

~~the claim to the Cabinet for Health Services, Office of Inspector General (OIG), for investigation and prosecution by a court of the appropriate jurisdiction.~~

~~(4) If the aggregate amount of a food stamp intentional program violation, Kentucky Transitional Assistance Program, or Medical Assistance recipient claim is \$3,000 or more, the cabinet shall refer the claim to the Office of the Attorney General (OAG) for investigation and prosecution by a court of the appropriate jurisdiction.]~~

(4) [(5)] If the OIG or OAG determines that the facts of the intentional program violation do not warrant prosecution by a court of the appropriate jurisdiction, the cabinet shall initiate an administrative disqualification hearing pursuant to this administrative regulation.

Section 2. Disqualification Hearing Procedures. (1) The cabinet shall provide state level administrative disqualification hearings that shall be heard by a fair hearing official.

(2) A hearing shall be conducted by an impartial official who:

(a) ~~Does [Did]~~ not have a personal stake or involvement in the case;

(b) ~~Is [Was]~~ not directly involved in the initial determination that the household member had committed intentional program violation; and

(c) ~~Is [Was]~~ not the immediate supervisor of the case worker who took the action.

(3) The powers and duties of the hearing official shall be the same as those established in [pursuant to] 921 KAR 3:070, Section 13.

(4) The household's rights during the hearing shall be the same as those established in [pursuant to] 921 KAR 3:070, Section 14.

(5) Form FS-80, "Notice of Suspected Intentional Food Stamp Program Violation", ~~is incorporated into this administrative regulation by reference and~~ shall serve as the notification to a household of:

(a) The cabinet's suspicion that an intentional program violation has been committed;

(b) The amount and period of the overpayment; and

(c) The household's right to an administrative disqualification hearing.

(6) The hearing decision shall comply with provisions established in [pursuant to] 921 KAR 3:070, Section 15.

(7) At the hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(8) Within ninety (90) days of the date the household member is notified in writing that a hearing has been scheduled, the cabinet shall:

(a) Conduct the hearing;

(b) Arrive at a decision; and

(c) Notify the household member of the decision.

(9) If the request is made at least ten (10) days in advance of the date of the scheduled hearing, the household member or representative is entitled to one (1) postponement that shall not [to] exceed thirty (30) days.

(10) If a hearing is postponed, the time limits pursuant to subsection (8) of this section shall be extended for as many days as the hearing is postponed.

Section 3. Advance Notice of Disqualification Hearing. (1) The cabinet shall provide written notice to the household member suspected of intentional program violation at least thirty (30) days prior to the date of an administrative disqualification hearing.

(2) The notice shall be sent certified mail, addressee only, return receipt requested and shall comply with the requirements of KRS 13B.050 and shall also contain the following:

(a) A summary of the evidence;

(b) A statement that the decision shall be based solely on information provided by the Food Stamp Office if the household member fails to appear at the hearing;

(c) A statement that the household member or representative shall have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear;

(d) A statement that a determination of intentional program violation shall result in disqualification penalties as described in Section 10 of this administrative regulation, and a statement of which penalty

is applicable to the case scheduled for a hearing;

(e) A listing of the household member's rights as contained in 921 KAR 3:070, Section 14;

(f) A statement that the hearing shall not preclude the state or federal government from:

1. Prosecuting the household member for intentional program violation in a civil or criminal court action; or

2. Collecting the overissuance; and

(g) If there is an individual or organization available that provides free legal representation, a statement of the availability of this service.

Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation.

(2) If the applicant, recipient and a party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(3) A party who wishes to introduce a document or written material into the record at the hearing shall mail a copy of the document to the hearing officer and to the opposing party prior to the date of the hearing.

(4) Failure to provide both the hearing officer and the opposing party with a copy of evidence may result in the exclusion of this evidence from the record.

(5) If the household member or his representative does not appear for a face-to-face or telephonic hearing, the cabinet shall determine whether proper advance notice was received by the household member pursuant to KRS 13B.050.

(a) If there is no proof that the household member received or refused a timely notice of the hearing, the hearing shall not be conducted.

(b) The hearing process shall be initiated again [is again initiated] if the household member is located and another notice is [can be] provided to that member.

(c) If the cabinet has sufficient evidence to verify that the household member either received or refused the notice, the hearing shall be conducted.

(6) Even if the household member is not present at the hearing, the hearing official shall:

(a) ~~[4.]~~ Carefully consider the evidence; and

(b) ~~[2.]~~ Determine if intentional program violation was committed based on clear and convincing evidence.

(7) An administrative disqualification hearing shall comply with the requirements of KRS 13B.080 and 13B.090.

(8) If the household member is found to have committed an intentional program violation, and a hearing official later determines [but a hearing official later determined] that the household member or representative had good cause for not appearing, pursuant to 921 KAR 3:070, Section 10, ~~for not appearing~~:

(a) The previous decision shall not remain valid;

(b) The cabinet shall conduct a new hearing; and

(c) The hearing official who originally ruled on the case may conduct the new hearing.

(9) The household member shall have ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear.

(10) A hearing official shall enter the good cause decision into the record.

Section 5. Participation While Awaiting a Disqualification Hearing. (1) A suspected intentional program violation shall not affect the individual's or the household's right to be certified and participate in the program.

(2) The cabinet shall determine the eligibility and benefit level of the household without regard to the suspected intentional program violation until:

(a) The hearing official or a court of appropriate jurisdiction finds that the individual has committed intentional program violation;

(b) The individual has completed and filed with the department form FS-80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing", waiving his right to an administrative disqualification hearing; or



(c) The individual has completed and filed with the department form FS-111, "Deferred Adjudication Disqualification Consent Agreement"; and

(d) The cabinet disqualifies the household member for intentional program violation.

Section 6. Disqualification Hearing Decision. (1) The hearing official shall base the determination of intentional program violation on clear and convincing evidence that demonstrates that the household member committed and intended to commit intentional program violation pursuant to 921 KAR 3:010, Section 1(28).

(2) The decision of the hearing official shall:

(a) Specify the reasons for the decision; ~~and~~

(b) Identify the:

1. Supporting evidence;

2. Kentucky statutory citations, if applicable;

3. State administrative regulation; and

4. Corresponding federal regulation; and

(c) Respond to reasoned arguments made by the household member or representative.

(3) The case record shall be retained by the cabinet until all appeals have been exhausted.

(a) The content of the case record shall comply with KRS 13B.130.

(b) This record shall be available to the household or its representative during work hours for copying and inspection.

Section 7. Notification of a Disqualification Hearing Decision. (1) The cabinet shall notify the household member in writing of:

(a) The hearing decision; and

(b) His rights to appeal that decision pursuant to KRS 13B.140.

(2) If the hearing finds that the household member committed intentional program violation, the notice shall:

(a) Be provided prior to disqualification;

(b) Inform the household member of the disqualification; and

(c) Advise the household member when the disqualification shall take effect.

(3) A notice shall be provided to the remaining household members informing them of:

(a) The allotment they shall receive during the disqualification period; or

(b) That they may reapply because their certification period has expired.

(4) A written demand letter shall be sent to the remaining household members explaining the repayment requirements.

Section 8. Waiver Disqualification Hearings. (1) An individual accused of intentional program violation shall be allowed to waive his rights to an administrative disqualification hearing if he completes and files with the department form FS-80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing".

(2) The cabinet shall ensure that:

(a) The appropriate field services supervisor or designated cabinet representative reviews the evidence against the household member suspected of an intentional program violation;

(b) A decision is obtained that the evidence warrants scheduling a disqualification hearing; and

(c) Written notification is provided to the household member suspected of intentional program violation, informing him of his right to waive an administrative disqualification hearing.

Section 9. Deferred Adjudication. (1) An individual accused of intentional program violation shall be allowed to complete and file with the department form FS-111, "Deferred Adjudication Disqualification Consent Agreement", if there is a [in a case of] deferred adjudication.

(2) The cabinet shall accept a completed form FS-111, "Deferred Adjudication Disqualification Consent Agreement", if a determination of guilt is not obtained from a court because the accused individual:

(a) Met the terms of a court order; or

(b) Is not prosecuted because he met the terms of an agreement with the prosecutor.

Section 10. Intentional Program Violation Disqualification Penalties. (1) An individual found to have committed an intentional program violation pursuant to this administrative regulation shall be ineligible to participate in the Food Stamp Program:

(a) Except as provided in subsections (2) through (5) of this section, a period of one (1) year upon the first occasion of intentional program violation;

(b) Except as provided in subsections (2) through (5) of this section, a period of two (2) years upon the second occasion of intentional program violation; and

(c) Permanently upon the third occasion of intentional program violation.

(2) An individual found by a federal, state or local court to have committed an act of intentional program violation by using or receiving food benefits in a transaction involving the sale of a controlled substance, pursuant to 21 USC 802, shall be ineligible to participate in the program:

(a) For a period of two (2) years upon the first occasion of the violation; and

(b) Permanently upon the second occasion of the violation.

(3) An individual found by a federal, state or local court to have committed an act of intentional program violation by using or receiving food benefits in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first occasion of the violation.

(4) An individual convicted by a federal, state, or local court of having trafficked food stamp benefits for an aggregate amount of \$500 or more shall be permanently ineligible to participate in the program upon the first occasion of the violation.

(5) Except as provided pursuant to subsection (1)(c) of this section, an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the program for a period of ten (10) years.

(6) The penalties in subsections (2) and (3) of this section shall also apply in cases of deferred adjudication, pursuant to Section 9 of this administrative regulation, ~~if [where]~~ the court makes a finding that the individual engaged in the conduct pursuant to subsections (2) and (3) of this section.

(7) If a court fails to impose a disqualification period for an intentional program violation, the cabinet shall impose the appropriate disqualification penalty pursuant to subsections (1), (2), (3), (4), or (5) of this section, unless it is contrary to the court order.

(8) One (1) or more intentional program violations which occurred prior to April 1, 1983 shall be considered as only one (1) previous disqualification ~~if [when]~~ determining the appropriate penalty to impose in a case under consideration.

(9) Regardless of when an action was taken by an individual that caused an intentional program violation to occur, the disqualification periods pursuant to subsections (2) and (3) of this section shall apply to a case in which the court makes the requisite finding on or after September 1, 1994.

(10) The cabinet shall not disqualify everyone in the household from participating in the Food Stamp Program but shall disqualify only the individual who:

(a) Is found to have committed the intentional program violation;

(b) Has completed and filed with the department form FS-80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing"; or

(c) Has completed and filed with the department form FS-111, "Deferred Adjudication Disqualification Consent Agreement".

(11) The cabinet shall disqualify only the individual from participating in the Food Stamp Program but the remaining household members ~~shall make [are responsible for making]~~ restitution for the amount of an overpayment, pursuant to 921 KAR 3:050.

(12) If the cabinet's determination of intentional program violation is reversed by a court, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) Restore the benefits that were lost as a result of the disqualification.

(13) The cabinet shall inform the household in writing of the disqualification penalties for committing ~~an~~ intentional program violation each time the household [at each time it] applies for bene-

fits.

Section 11. Appeal Rights of the Household. (1) ~~[No]~~ Further administrative appeal **procedures shall not exist** ~~[procedures shall exist]~~ after an administrative disqualification hearing finds that:

- (a) An intentional program violation was committed; or
- (b) An individual has waived his right to an administrative disqualification hearing.
- (2) The determination of intentional program violation made by a disqualification hearing official shall not be reversed by a subsequent **administrative** fair hearing decision.
- (3) The household member who is subject to subsection (2) of this section **shall be [is]** entitled to seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.
- (4) The period of disqualification may be subject to stay by:
  - (a) A court of appropriate jurisdiction; or
  - (b) Other injunctive remedy.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "FS-80, Notice of Suspected Intentional Food Stamp Program Violation[~~]~~, Edition 8/01" [44/00], Cabinet for Families and Children;
- (b) "FS-80, Supplement A, Voluntary Waiver of Administrative Disqualification Hearing[~~]~~, Edition 8/01" [44/00], Cabinet for Families and Children; and
- (c) "FS-111, Deferred Adjudication Disqualification Consent Agreement[~~]~~, Edition 8/01" [44/00], Cabinet for Families and Children.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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

APPROVED BY AGENCY: March 14, 2002

FILED WITH LRC: March 15, 2002 at 10 a.m.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community Based Services**  
**Division of Policy Development**  
**(As Amended at ARRS, May 14, 2002)**

**922 KAR 1:300. Standards for child-caring facilities.**

RELATES TO: KRS 17.165, 164.740, 189.125(3), 198B.050 to 198B.090, 199.011(2), (3), (4), (6), (7), (10), (11), 199.640, ~~[199.644]~~ 199.650, 199.660, 199.670, 211.350 to 211.380, 214.034(4), 271B.8, 273.161(7), 600.020(23) ~~[49]~~, 610.110(6), 615.010, 615.030, 615.040, 620.020, 620.030

STATUTORY AUTHORITY: KRS 194B.050(1), 199.640(5), 199.645, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.640(5) authorizes the Cabinet for Families and Children to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies.

- Section 1. Definitions. (1) "Aftercare" means a service provided to a child after discharge from a child-caring facility.
- (2) "Board of directors" is defined at KRS 273.161(7).
  - (3) "Cabinet" means the Cabinet for Families and Children.
  - (4) "Case" means an individual child or family being provided services by a social worker or counselor.
  - (5) "Chemical restraint" means a drug used as a restraint that is a medication used to control behavior or to restrict the patient's freedom of movement and is not a standard treatment for the patient's medical or psychiatric condition.
  - (6) "Child" is defined at KRS 199.011(4), 600.020(8) ~~[5]~~, and 610.110(6).
  - (7) "Child-caring facility" is defined at KRS 199.011(6) ~~[and 199.644(1)(b)]~~.

(8) "Child-placing agency" is defined at KRS 199.011(7).

(9) "Child-caring program" means the method of delivering a child-caring service.

(10) "College or university" means an institution accredited by one (1) of the eleven (11) regional accrediting organizations recognized by the U.S. Department of Education, Office of Postsecondary Education, and:

(a) For ~~[in the case of]~~ a Kentucky institution, licensed by the Kentucky Council on Postsecondary Education or the Kentucky Board for Proprietary Education; and

(b) For ~~[in the case of]~~ an out-of-state institution, ~~[it must be]~~ licensed in its home state if licensure is required in that state.

(11) "Community resource ~~[resources]~~" means a service or activity available in the community that supplements those provided by the child-caring facility or child-placing agency in the care and treatment of a child.

(12) ~~[44]~~ "Corporal physical discipline" is defined at KRS 199.640(6).

(13) ~~[42]~~ "Department" means the Department for Community Based Services.

(14) ~~[43]~~ "Crisis intervention unit" means a unit that serves a child in need of short-term intensive treatment, to avoid risk of placement to a higher level of care.

(15) ~~[44]~~ "Direct child-care staff" means an employee or volunteer providing face-to-face care and supervision of a child.

(16) ~~[45]~~ "Discharge" means a planned release of a child from a program.

(17) ~~[46]~~ "Division" means the Division of Licensed Child Care ~~[Licensing and Regulation]~~, Cabinet for Health Services.

(18) ~~[47]~~ "Emergency discharge" means the release of a child from a program as a result of a circumstance that presents a risk to the health or safety of a child.

(19) ~~[48]~~ "Emergency shelter" is defined at KRS 600.020(23) ~~[49]~~.

(20) ~~[49]~~ "Emergency shelter child-caring facility" means a child-caring facility that meets the requirements of 922 KAR 1:380.

(21) ~~[20]~~ "Executive director" means the person employed by the board of directors to be responsible for the administration and management of a child-caring facility.

(22) ~~[24]~~ "Group home" is defined at KRS 199.011(10).

(23) ~~[22]~~ "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(24) ~~[23]~~ "Indoor living area" means an area in the child-caring facility that is separate from a hallway, bedroom, kitchen, stairway, vestibule, bathroom, closet, unfinished basement, or attic.

(25) ~~[24]~~ "Institution" is defined at KRS 199.011(11).

(26) ~~[25]~~ "Living unit" means a building or part thereof in which a child resides, not exceeding sixteen (16) beds.

(27) ~~[26]~~ "Permanence" is defined at KRS 620.020(8) ~~[7]~~.

(28) ~~[27]~~ "Residential child-caring facility" means a child-caring facility that meets the standards established in 922 KAR 1:390.

(29) ~~[28]~~ "Residential treatment program" means a residential child-caring facility that meets the treatment program requirements of 922 KAR 1:390, Section 4.

(30) ~~[29]~~ "Service coordination" means a service provided by the individual on the treatment team who has responsibility for the coordinated implementation of the child's ITP.

(31) ~~[30]~~ "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his social environment.

(32) ~~[34]~~ "Therapeutic hold" means a technique used by a specially-trained staff member for the purpose of restricting a child's freedom of movement, in order to maintain a safe environment for the child and others.

(33) ~~[32]~~ "Time-out" means a treatment intervention utilized by child-caring staff to separate a child from others in a nonsecure area for a time limited period, in order to permit the child to regain control over his behavior.

(34) ~~[33]~~ "Treatment" means individualized management and care of a child, utilizing professionally credentialed and certified staff, and a component of the treatment environment to assist the child in resolving his emotional conflict or behavioral disorder.

(35) ~~[34]~~ "Treatment team" means a representative group of people who provide services to the child and the child's family.

(36) ~~[(35)]~~ "Unplanned discharge" means the release of a child from the child-caring facility that is not in accordance with the ITP.

(37) "Youth wilderness camp" means a specific program of a child-caring facility that is designed to provide an outdoor experience consistent with a child's ITP.

Section 2. ~~[Scope of]~~ Operations and Services. (1) ~~[The standards for a child-caring facility pertain to the out-of-home care of a child who may benefit by the experience that a residential service, including aftercare service may offer.~~

(2) This administrative regulation establishes standards for the following child-caring facilities:

(a) An emergency shelter child-caring facility, also governed by 922 KAR 1:380;

(b) An emergency shelter child-caring facility with treatment, also governed by 922 KAR 1:380, Section 3~~[(4)]~~;

(c) A residential child-caring facility, also governed by 922 KAR 1:390, including:

1. A group home; and
2. An institution.

(d) A residential treatment program, also governed by 922 KAR 1:390, Section 4, including:

1. A crisis intervention unit, also governed by 922 KAR 1:390, Section 5;

2. A group home, also governed by 922 KAR 1:390, Section 7 ~~[(6)]~~; ~~and~~

3. An institution; and

(e) A youth ~~[camp]~~ wilderness camp program, also governed by 922 KAR 1:460.

(2) ~~[(3)]~~ Except for a child-caring facility maintaining a license prior to October 16, 2000, a child-caring facility shall not be located or operated on the grounds of a psychiatric hospital.

Section 3. Administration and Operation. (1) The licensing procedure for a child-caring facility shall:

(a) Be administered as established in ~~[pursuant to]~~ 922 KAR 1:305; and

(b) Based upon the services provided, meet the requirements of this administrative regulation and 922 KAR 1:380, ~~[or]~~ 922 KAR 1:390, or 922 KAR 1:460.

(2) Board of directors.

(a) The child-caring facility shall have a board of directors in accordance with KRS Chapter 271B, Subtitle 8.

(b) The board of directors shall:

1. Consist of at least seven (7) members;

2. Meet at least quarterly;

3. Cause minutes of each meeting to be taken and kept in written form;

4. Have the authority and responsibility to ensure continuing compliance with this administrative regulation and other relevant federal, state, and local law;

5. Have procedures in place to insure that its staff receives ongoing training as defined in subsection (6)(o) ~~[(a)]~~ of this section ~~[pursuant to 922 KAR 1:300, Section 3(6)(h)]~~;

6. Obtain a criminal records check of prior convictions of the executive director prior to employment; and

7. Approve a mission statement delineating:

- a. The purpose;
- b. Objective; and
- c. Scope of service to be provided.

(3) Executive director.

(a) Duties of the executive director shall be determined by the board of directors.

(b) The executive director shall be responsible for the child-caring facility and its affiliates in accordance with the child-caring facility's written policy.

(c) If the executive director is not on the premises, a designated staff person shall be responsible for the day-to-day operation of the child-caring program.

(d) The executive director shall oversee and report to the board on a quarterly basis, providing an evaluation of program services addressing measurable goals, staff training, and incident reports.

(e) The criteria and process of the quarterly evaluation shall be approved by the board.

(4) Staff qualifications.

(a) A person employed as an executive director after the effective date of this administrative regulation shall possess the following qualifications:

1. A master's degree in a human services field from a college or university, supplemented by two (2) years of work experience in management of a human services program related to working with families and children; or

2. A bachelor's degree in a human services field from a college or university, supplemented by four (4) years work experience in management of a human services program related to working with families and children.

(b) A treatment director or person employed by the child-caring facility in a position responsible for supervising, evaluating, or monitoring social work and related activities shall possess at least:

1. A master's degree in the human services area from a college or university including the areas of:

- a. Social work;
- b. Sociology;
- c. Psychology;
- d. Guidance and counseling;
- e. Pastoral counseling and religion; and

2. Two (2) years work experience in a human services field.

(c) An employee responsible for social work, counseling, or planning and coordinating these services to a child shall have at least a bachelor's degree in a human services field from a college or university.

(d) A person employed in a position responsible for supervising, evaluating, or monitoring the daily work of direct child-care staff shall possess at least:

1. Two (2) years of education from a college or university and two (2) years of work experience in a child-caring facility; or

2. A high school diploma, or an equivalence certificate, and at least five (5) years work experience in a child-caring facility.

(e) A person employed in a position responsible for the daily direct care or supervision of a child shall possess at least a high school diploma or equivalency certificate.

(f) If an employee is responsible for varied job responsibilities and falls within more than one (1) of the categories specified, the employee shall meet the more rigorous qualifications.

(g) A child-caring facility contracting for the services of a social worker or treatment director not on the staff of the child-caring facility shall document that the social worker or treatment director meets the qualifications established in paragraphs (b) and (c) of this subsection. An agreement for provision of service shall be on file at the child-caring facility, and shall specify the qualifications of the social worker or social services professional.

(5) Staffing requirements.

(a) The child-caring facility shall have:

1. A written policy describing a child-to-direct-child-care staff ratio that is [provided in Section 2(2) of this administrative regulation and is] consistent with the staff-to-child ratios required in paragraph (b) of this subsection [for the types of a child-caring facility program in Section 2(2) of this administrative regulation]; and

2. An explanation of the assignment of staff in order to:

- a. Ensure the health and safety of a child; and
- b. Implement the child-caring program.

(b) Staff-to-child ratios for each type of facility shall be as follows:

1. An emergency shelter child-caring facility: one (1) staff member to ten (10) children.

2. An emergency shelter child-caring facility with treatment: one (1) staff member to six (6) children.

3. A residential child-caring facility:

a. One (1) staff member to ten (10) children age six (6) and over; or

b. One (1) staff member to five (5) children under age six (6).

4. A residential child-caring facility with treatment:

a. One (1) staff member to six (6) children; and

b. One (1) staff member to twelve (12) children during sleeping hours.

5. A crisis intervention unit:

a. One (1) staff member to four (4) children; and

b. One (1) staff member to six (6) children during sleeping

hours.

6. A group home:

- One (1) staff member to four (4) children; and
- One (1) staff member to accompany a child while away from the home.

7. An institution: one (1) staff member to ten (10) children.

8. A youth wilderness camp program to include:

a. A base camp:

- One (1) staff member to four (4) children age eleven (11) and (12) years old; and
- One (1) staff member to six (6) children age thirteen (13) and above; and

b. A field program, for which two (2) staff members shall be on location at all times:

- One (1) staff for three (3) children age eleven (11) and (12) years old;
- One (1) staff for four (4) children age thirteen (13) and above;
- Group size, including staff, shall not exceed more than twelve (12) at one (1) time. ~~There shall always be two (2) staff on location in a field program;~~

(iv) In a mixed gender group, one (1) woman ~~there shall be a minimum of one (1) female staff~~ and one (1) man, with one (1) staff member remaining ~~male staff, and at least one (1) staff remains~~ awake during sleeping hours; ~~and~~

(v) A staff-to-child ratio shall be ~~maintained~~ based on the age of the youngest child; and

(vi) A volunteer shall not be included in the staff-to-child ratio.

(c) There shall be at least one (1) staff member present in each child-caring facility building if a child is present.

(d) At least one (1) staff member certified in first aid and cardiopulmonary resuscitation shall be on the premises, if a child is present.

(e) The child-caring facility shall have a written work schedule and a policy that provides for utilization of relief staff.

(f) The child-caring facility shall employ an individual who is responsible for the overall planning and coordinating of social services to a family and child.

(g) Social services staff shall not carry a caseload of more than fifteen (15) children and their families.

(6) Personnel policy.

(a) A child-caring facility shall have a written personnel policy and procedure.

(b) An employee of the child-caring facility shall be at least eighteen (18) years of age.

(c) The employment of an individual shall be governed by KRS 17.165, with regard to a criminal record check.

(d) A new criminal record check shall be completed at least ~~a minimum of~~ every two (2) years on each employee or volunteer. ~~The following shall not be employed in a position involving direct contact with a child:~~

1. A person listed on the Nurse's Aide Abuse Registry of the Kentucky Board of Nursing; or

2. A person with a substantiated allegation of exploitation of a child. Cabinet response to allegations is regulated by 922 KAR 1:320 and 922 KAR 1:330.

(e) An employee under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 ~~felonious conduct~~ shall be immediately removed from contact with a child within the child-caring facility until the employee is cleared of the charge.

(f) Each employee or volunteer ~~at a child-caring facility~~ shall submit to a check of the central registry described by 922 KAR 1:470. An individual ~~who is~~ listed on the central registry shall not be a volunteer at or be employed by a child-caring facility.

(g) Each licensee shall report to the Cabinet for Health Services and each child-caring facility employee or volunteer shall report to the licensee or facility's director, an incident that occurs subsequent to the most recent ~~one (1) time only~~ central registry check, if the employee or volunteer:

1. Is the subject of a cabinet child abuse or neglect investigation;

or

2. Has been found by the cabinet or a court to have abused or neglected a child.

(h) An individual shall not be left alone in the presence of a child if a central registry check has not been completed.

(i) Determination by the cabinet of risk of potential harm by an employee to a child in a child-caring facility shall result in:

1. ~~[An] Investigation of the employee for evidence of child abuse or neglect [on an employee]; and~~

2. The removal of the ~~[an]~~ employee from direct contact with a child pending:

a. The duration of the investigation; and

b. Completion of the administrative appeal process in accordance with 922 KAR 1:320.

(j) A current personnel record shall be maintained for each employee, that includes the following:

1. Name, address, Social Security number, date of employment, and date of birth;

2. Evidence of a current registration, certification, ~~or~~ licensure, and college credentials, ~~[credential]~~ if required by the position;

3. Record of ongoing participation in an agency staff development program as specified in paragraphs (n) and (o) ~~[paragraph (n)]~~ of this subsection ~~[in participation of staff development];~~

4. Record of performance evaluation;

5. Criminal records check as established in ~~[pursuant to]~~ paragraph (c) of this subsection;

6. Documentation of a central registry check completed every two (2) years ~~[on each individual]~~ in accordance with 922 KAR 1:470 ~~[Record of physical exam related to employment, as specified in the child-caring facility's policy];~~

7. Personnel action; and

8. Application for employment and resume or contract.

(k) A child-caring facility shall retain an employee personnel record for at least five (5) years after termination of employment ~~[for a minimum of five (5) years].~~

(l) ~~[-and]~~

9. Evidence of personnel orientation.

(g) An employee shall document compliance with a requirement for meeting state or national professional standards, as set forth in the job description.

(m) ~~[(h)]~~ The child-caring facility shall have a record of participation and successful completion of an ongoing staff and volunteer development program.

(n) ~~[(4)]~~ The staff development program shall be under the supervision of a designated staff member; and

(o) Full-time ~~[All]~~ ~~[(2)]~~ direct child care staff shall have at least forty (40) hours, and part-time ~~[or part-time (half time or less or limited basis)]~~ direct child care staff shall have at least twenty-four (24) hours, of training specific to task to be performed and of annual training in the following:

1. ~~[a.]~~ Emergency and safety procedure;

2. ~~[b.]~~ Principle and practice of child residential care;

3. ~~[c.]~~ Behavior management, including de-escalation training;

4. Therapeutic hold for a child-caring facility using the ~~[facilities that use this]~~ technique;

5. ~~[d.]~~ First aid; and

6. ~~[e.]~~ Personnel orientation.

(p) ~~[(4)]~~ A volunteer who functions as a professional or direct staff member without compensation shall meet the same general requirements and qualifications.

(q) A child-caring facility using therapeutic hold ~~[in a child-caring facility where therapeutic hold is used, the child-caring facility]~~ shall:

1. Develop and maintain ~~[a]~~ clearly-written policy and procedure governing the use of therapeutic hold of a child, including a requirement for a de-escalation plan, in accordance with 922 KAR 1:390, Section 4;

2. Require a staff member who conducts therapeutic hold, to complete at least sixteen (16) hours of annual training in approved methods of de-escalation and therapeutic hold from a nationally-recognized accreditation organization approved by the cabinet, as part of the ~~[forty (40) hours of]~~ annual training established in paragraph (o) ~~[(n)]~~ of this subsection, to include:

a. Assessing physical and mental status, including signs of physical distress;

b. Assessing nutritional and hydration needs;

c. Assessing readiness to discontinue use of the intervention;

and

d. Recognizing when medical or other emergency personnel are

needed.

(r) The program director shall review and analyze instances of therapeutic hold in order to:

1. Assure compliance with Section 5(2)(f) through (h) of this administrative regulation and the child-caring facility policy;
2. Provide documentation of a plan of action to prevent injury to a child or staff as a result of the use of therapeutic hold; and
3. Review each incident no later than one (1) working day after its use.

(7) Interstate placement.

(a) Before accepting a child from another state or placing a child in another state, the child-caring facility shall be in compliance with:

1. Applicable provisions of the Interstate Compact on Placement of ~~the~~ Children, KRS 615.030, and 615.040; and
2. The Interstate Compact on Juveniles, KRS 615.010.

(b) If a child committed to the cabinet makes a brief visit out of state, not accompanied by child-caring facility personnel, the child-caring facility shall obtain prior consent from **cabinet staff member responsible** ~~(the social services worker in the cabinet who has responsibility)~~ for the case.

(c) If an emergency placement of a child into a licensed child-caring facility is made, the placement source shall be responsible for compliance with KRS 615.030 to 615.040. If the receiving child-caring facility is aware of noncompliance by the placement source, the child-care facility shall notify the cabinet's interstate compact coordinator.

(8) Record retention.

(a) The child-caring facility shall retain all records, books, and reports related to financial conditions and status for auditing purposes for a minimum of five (5) years.

(b) Make available all books, records, and financial information for review, inspection, auditing, and photocopying by the cabinet or cabinet designee, authorized federal and state agency reviewers and auditors.

Section 4. Physical Plant. (1) A child-caring facility shall comply with applicable state and local law relating to:

- (a) Construction;
- (b) Sanitation; and
- (c) Building maintenance.

(2) The child-caring facility shall conform to the Kentucky Standards of Safety in accordance with 815 KAR 10:060 ~~(life safety code standards adopted by the State Fire Marshal's Office)~~.

(3) A climate control system shall be provided as follows:

- (a) A minimum temperature of sixty-five (65) degrees Fahrenheit maintained in occupied areas in cold weather conditions;
- (b) In warm weather conditions and periods of extreme heat, an occupied area shall be properly ventilated;
- (c) If not air-conditioned and the temperature in an occupied area exceeds eighty-five (85) degrees Fahrenheit, the child-caring facility director shall assure that the following occurs:
  1. A fan is utilized to circulate air;
  2. The child-caring facility is properly ventilated to outside air;
  3. Ice water is readily available and served to residents; and
  4. Staff frequently monitor residents for a sign or symptom of a heat-related illness.

(4) The water supply shall be from an approved source and easily available from the following:

1. Drinking fountain;
2. Refrigerator; or
3. Cold water tap.

(5) The plumbing and waste disposal systems shall comply with applicable provisions of the Uniform State Building Code, KRS 198B.050, and with laws regarding on-site sewage disposal, KRS 211.350 to 211.380, if applicable.

(6) Housekeeping and maintenance service.

(a) The building and its content shall be maintained in a clean and safe condition and in good repair.

(b) A maintenance plan shall be implemented.

(c) The child-caring facility shall ensure that the grounds and outdoor equipment are well kept and the exterior of the building is in good repair.

(d) The interior of the building and its content shall be in good repair.

(e) Garbage and trash shall be:

1. Stored in an area separate from those used for the preparation and storage of food;
2. Removed from the premises regularly; and
3. Placed in a container that is cleaned regularly.

(f) Insecticides, pesticides, and chemical poisons shall be plainly labeled and ~~(pest control compounds, if kept on the premises, shall be)~~ stored in a secure, locked area. Access shall be given to:

1. The facility's maintenance personnel; or
2. A pest control company with which the facility has a contract.

(7) Bedroom.

(a) A bedroom shall be:

1. Of adequate size to permit at least three (3) linear feet between each bed or set of bunk beds; and
2. Constructed to allow no more than four (4) residents per room.

(b) A bedroom for a child above age three (3) shall be equipped with an individual bed for each child that shall be:

1. Long and wide enough to accommodate the child's size;
2. Developmentally appropriate for the child; and
3. Equipped with a support mechanism and a clean mattress.

(c) A bed occupied by a child shall be placed so that the child shall not experience discomfort because of:

1. Proximity to a radiator or heat outlet; or
2. Exposure to drafts.

(d) Except for a sibling indicated in an ITP, there shall be separate sleeping quarters for boys and girls over the age of five (5).

(e) Closet space and drawer space shall be provided for each child to accommodate his or her personal belongings.

(f) A child shall not be housed in a room, detached building, or enclosure that has not previously been inspected and approved for resident use.

(g) A child shall be provided with clean bed linens, laundered at least once a week, and a waterproof mattress covering.

(8) Indoor living area. An indoor living area shall have:

- (a) At least thirty-five (35) square feet per child; and
- (b) Comfortable furnishings adequate for the number of children served.

(9) Bathroom.

(a) For every six (6) children residing with the living unit, a living unit shall have a minimum of:

1. One (1) wash basin with hot and cold water;
2. One (1) flush toilet; and
3. One (1) bath or shower with hot and cold water.

(b) A child shall be provided with access to:

1. Toilet paper;
2. Towels;
3. Soap; and
4. Wastebasket.

(c) Each bathtub and shower shall have an enclosure or screen for individual privacy. If more than one (1) toilet is located in the same bathroom, each toilet shall:

1. Be partitioned; and
2. Include a door capable of remaining closed.

(d) A bathroom shall contain at least one (1) nondistorting mirror secured to the wall at a convenient height.

Section 5. Health, Safety, and Nutritional Requirements. (1) Health.

(a) A child-caring facility shall have written policy and procedure for health and medical care, to include provisions for:

1. The care and disposition of an ill child; and
2. Emergency care.

(b) The service of a physician shall be made available to a child. If a service of a licensed physician is not available in the community, the child-caring facility shall request the assistance of the:

1. County health department; or
2. The Cabinet for Health Services, Department for Public Health, Division of Adult and Child Health.

(c) Staff shall follow licensed physician orders for:

1. Medicine;
2. Prescription; and
3. Medical care.

(d) Except for a weekend or holiday, within forty-eight (48) hours

of admission to a child-caring facility, a child shall have:

1. An initial health screening for illness, injury, and communicable disease or other immediate needs, by a nurse or trained child-care staff;
2. After the initial health screening, a physical examination by a licensed physician or a qualified person under the supervision of a licensed physician, within two (2) weeks of admission, unless it has been documented that the child has received an examination during the past twelve (12) months; and
3. The examining professional shall report, in writing, observations and findings including:
  - a. Developmental history of the child, illnesses, operations, and immunizations if available to the physician;
  - b. A limitation the child may have that may prevent participation in an activity scheduled by the child-caring facility;
  - c. Visual and auditory examination results;
  - d. Recommendation and order for future care, treatment, and examinations;
  - e. TB skin test results, unless contraindicated by a qualified person under the supervision of a licensed physician ~~(medical professional)~~; and
  - f. Other tests for communicable disease as indicated by the medical and social history of the child.
- (e) An annual physical examination shall be scheduled and documented as established in ~~(pursuant to)~~ paragraph (d)3 of this subsection.
- (f) Upon admission, the child-caring facility shall consult with a physician if there is evidence that the child may require medical attention.
- (g) The child-caring facility shall develop a procedure for a child requiring a specific provision for an infectious medical condition.
- (h) A separate health record shall be maintained for each child, kept on the premises, and be made available to a:
  1. Physician;
  2. Nurse; or
  3. Designated staff member.
- (i) The health record shall contain the following:
  1. Copy of each physical examination, including any recommendations for treatment;
  2. Previous and continuing health and medical history if available;
  3. Record or report of each test, immunization, periodic reexamination, and physician order and instruction;
  4. Report and date of each dental examination and treatment;
  5. Authorization for regular and emergency medical, dental, and surgical care, signed at admission by the legal custodian ~~(custody holder upon admission)~~;
  6. Documentation of medication administered to the child; and
  7. Documentation of a special provision made for the child in accordance with ~~(pursuant to)~~ a physician's order.
- (j) A child's medical need shall be provided for as recommended by a licensed physician.
- (k) The facility shall keep an immunization certificate on file for each child, in accordance with KRS 214.034(4).
- (l) If a child dies while in the care of a child-caring facility or in a home operated or supervised by the child-caring facility:
  1. The child-caring facility shall immediately notify the:
    - a. County coroner;
    - b. Child's parent;
    - c. Guardian or custodian; and
    - d. Cabinet staff ~~(Case worker)~~;
  2. A verbal report of the death shall be made immediately to the Commissioner of the Department for Community-Based Services;
  3. A written comprehensive report from the executive director outlining the incident shall be forwarded to the Office of the Commissioner, Department for Community-Based Services, on the next working day following the verbal report; and
  4. If a child's death occurred as a result of alleged abuse or neglect, the executive director of the child-caring facility shall make verbal and written reports as required by KRS 620.030(1) and (2).
- (m) Upon discharge, medical information shall follow the child if a release form has been obtained.
- (n) With the exception of a dental examination that has been performed in the six (6) months preceding admission, the child-

caring facility, within one (1) week after a child's admission, shall schedule an appointment for a dental examination. The facility shall ensure the treatment of emergency dental needs by a licensed dentist as they arise.

- (o) A child age two (2) years and above shall be examined at least annually by a licensed dentist.
- (p) The child-caring facility shall:
  1. Document the information required by this subsection; and
  2. Assure the confidentiality of the information.
- (q) The child-caring facility shall maintain a continuous program of personal hygiene.
- (2) Safety.
  - (a) A child shall be instructed in fire prevention, safety, and fire emergency procedures.
    1. The child-caring facility shall maintain and post a current, written emergency fire evacuation plan and diagram to include:
      - a. An evacuation route and procedure; and
      - b. Location of fire extinguishers.
    2. Documentation of fire evacuation plan and emergency drills shall be performed quarterly for each of the following emergency events:
      - a. Tornado and severe thunderstorm warning;
      - b. Flash flood if applicable;
      - c. Other emergency situations.
    3. An emergency plan shall designate a suitable shelter in the event of an emergency.
  - (b) A child-caring facility with a swimming pool shall be staffed with a Red Cross certified lifeguard in accordance with ~~(pursuant to)~~ 902 KAR 10:120, Section 13~~(2)(c))~~.
  - (c) Donated home processed foods shall be prohibited.
  - (d) Transportation.
    1. If transportation is provided directly, contracted for, or arranged, a child-caring facility shall require:
      - a. Compliance with state laws pertaining to vehicles, drivers, and insurance;
      - b. A seat for each child and that the child remain seated while the vehicle is in motion;
      - c. A seat belt be used to secure the child;
      - d. A vehicle used to transport a child off campus to provide a seat for each passenger as manufactured standard equipment; and
      - e. That a child never be left unattended in a vehicle.
    2. ~~(For more than five (5) children,)~~ The maximum number of children, ~~including a child under the age of six (6),~~ a driver shall supervise alone is four (4) ~~(five (5)). The applicable staff-to-child ratios pursuant to Section 3(5)(c) of this administrative regulation shall apply).~~
    3. A child under forty (40) inches tall or forty (40) pounds in weight shall not be transported unless restrained in a safety seat approved in accordance with ~~(pursuant to)~~ KRS 189.125(3).
    4. A vehicle shall not pick up and deliver a child under the age of six (6) to a location that requires the child to cross a street or highway unless the child is accompanied by an adult.
    5. If transportation is provided by a means other than licensed public transportation:
      - a. The vehicle shall be maintained in a safe mechanical and operable condition;
      - b. A thorough inspection of the vehicle shall be made and documented by a qualified mechanic at least annually; and
      - c. If the driver is not in his seat, the motor shall be turned off, keys removed, and brake set.
    - (e) A child with a history of aggressive behavior or sexual ~~(sexually)~~ acting-out shall be assessed by the treatment team to ensure the safety of the child and other children in the facility, including (to include) sleeping arrangements with the appropriate safety measures included in the child's ITP.
    - (f) Therapeutic hold shall be used in an emergency or a crisis situation only:
      1. After attempts to de-escalate the situation have been made;
      2. By trained staff; and
      3. To prevent:
        - a. A child from injury to self or others; or
        - b. Serious property damage or disruption of the child-caring facility's program.
    - (g) Therapeutic hold shall not be used as:



1. Punishment;
2. Discipline; or
3. For the convenience of staff.

(h) Therapeutic hold shall be discontinued if a child displays adverse side effects including:

1. Illness;
2. Severe emotional or physical stress; or
3. Physical damage.

(3) Nutritional requirements.

(a) A child shall be served meals that:

1. Meet the nutritional guidelines of the U.S. Department of Agriculture that include foods from the five (5) basic food groups; and
2. Satisfy the quantity required to meet the needs of each child as to age, activity, and prescribed diet or ITP.

(b) A child shall be encouraged to eat the food served, but shall not be subjected to coercion.

(c) An order for a modified diet from a licensed physician shall be followed by the child-caring facility.

(d) A menu shall be planned at least one (1) week in advance, dated, posted, and kept on file for one (1) year.

(e) With the exception of a child receiving a meal at school, three (3) meals a day shall be provided at regular intervals and, except for weekends and holidays, no more than fourteen (14) hours shall lapse between the evening meal and morning meal.

1. A nourishing snack shall be provided and:

- a. May be part of the daily food needs;
- b. Shall not replace a regular meal; and
- c. Shall be recorded on the menu.

2. A meal shall be scheduled at set times each day so that at least one (1) hot meal a day is not hurried, allowing time for conversation.

3. Food, or withholding of food, shall not be used as a punishment.

4. Only pasteurized milk and milk products, and U.S. government inspected meat shall be served to a child.

5. Food shall be prepared to preserve nutritive value and heighten flavor and appearance.

6. The same food shall be served to children under care and to staff members, unless a food is not suitable for a person because of:

- a. The person's age;
- b. A dietary restriction; or
- c. A religious preference.

(f) Table service shall be provided for a child capable of eating at a table.

1. Tables and chairs shall be:

a. Of a height that corresponds to the size of the child served; and

b. Constructed of material that can be easily sanitized.

2. A child who has not had an opportunity to learn how to handle food with the usual table service shall be managed in a way that he shall not be embarrassed or subjected to ridicule.

(g) A written report of a food inspection by municipal, county, or federal authorities shall:

1. Be kept on file at the child-caring facility; and
2. Meet local, state, and federal regulations.

(h) If a child-caring facility subcontracts a food service, applicable federal and state administrative regulations shall apply.

Section 6. General Requirements. (1) An incident of suspected child abuse or neglect shall be reported as required by KRS 620.030.

(2)(a) **The facility shall, with regard to suspected child abuse or neglect by an employee:**

1. Document each incident;

2. Keep each incident document on file;

3. Make the files accessible to the cabinet. ~~[Each incident of suspected child abuse or neglect by an employee shall be documented and kept on file by the child-caring facility and accessible to the cabinet.]~~

(b) A child shall not be exploited for promotional purposes, or in a manner that shall cause the child or family to suffer discomfort or embarrassment.

(c) ~~(b)~~ Except as indicated in paragraph (d) of this subsection, a child shall not be used personally for a fund-raising purpose for the

child-caring facility.

(d) ~~(c)~~ If a picture, slide, recording, or other private, **personal effect [and personal effects]** of a child is used in fund-raising or promotional effort of a child-caring facility, written permission shall be obtained from:

1. A parent or guardian; or
2. An authorized:
  - a. Representative of the cabinet;
  - b. Representative of the Department of Juvenile Justice; or
  - c. Legal representative.

(3) ~~For an [any]~~ activity conducted away from a child-caring facility, the facility shall:

(a) ~~Safeguard [Be responsible for]~~ the health and safety of the children during the activity ~~[any activity conducted away from the facility];~~

(b) Have a written policy and procedures governing the activity ~~[written policies and procedures governing any activity conducted away from the facility];~~

(c) Maintain staff-to-child ratios in accordance with Section 3 of this administrative regulation ~~[during any activity conducted away from the facility];~~ and

(d) Provide transportation in a manner that complies with Section 5(2)(d) of this administrative regulation ~~[during any activity conducted away from the facility];~~

(4) Clothing and personal possessions.

(a) Through agreement with the child's legal custodian ~~[custody holder]~~, the child-caring facility shall provide a child with clothing and footwear that is clean, well-fitting, and seasonal.

(b) A child shall be provided individual articles of personal hygiene.

(c) The child-caring facility shall allow a child to have personal belongings and property consistent with this administrative regulation and child-caring facility policy.

(5) ~~(4)~~ A child's money.

(a) The child-caring facility shall have written policy and procedure relating to money belonging to a child.

(b) A child shall have access to information regarding the balance of his fund.

(c) Within thirty (30) days of discharge, funds belonging to a child shall be transferred with or returned to the child.

(6) ~~(5)~~ Visitation and communication shall include:

(a) Written policy on visitation and communication;

(b) An arrangement for visitation that is not in conflict with the ITP;

(c) Documentation of each visit in the case record; and

(d) Access to a telephone to make and receive a telephone call consistent with the child's ITP, current court orders, and the facility's child-caring policy.

(e) Allowing a child to contact cabinet staff ~~[the cabinet or caseworker]~~ by telephone within twenty-four (24) hours of the request of the child.

(7) ~~(6)~~ Religion, culture, and ethnic origin.

(a) Facility policy shall demonstrate consideration for and sensitivity to:

1. The racial, cultural, ethnic, and ~~or~~ religious background of a child in care; and

2. Availability of activities appropriate to the child's cultural or ethnic origin.

(b) With the exception of a religious practice that is destructive, an opportunity shall be provided for a child to:

1. Practice the religious belief and faith of the child's individual or family preference; and
2. Participate in a religious activity without coercion.

(8) ~~(7)~~ Education.

(a) If a child-caring facility operates its own school program, it shall have written policy and procedure regarding the development and implementation of the educational program. The policy and procedure shall include:

1. School attendance;
2. Teaching staff;
3. School records;
4. Educational supplies and equipment;
5. Individual educational plans; and
6. Use of a community school.

(b) A child-caring facility shall ensure that a child attends an accredited educational program the number of days required by law.

(c) A child shall be enrolled in an accredited educational program within one (1) week of admission.

(d) A school-age child ~~[who is]~~ ineligible or unable to attend an accredited school shall have an educational program specific to the individualized need of the child that may include a General Education Diploma or vocational training.

(e) If a child-care facility operates an educational program, maintenance of school records shall comply with state law and administrative regulations of the educational body having jurisdiction.

(f) The child-caring facility shall provide a quiet area and designated time for study.

(9) ~~(8)~~ Work and chore assignment.

(a) An assigned chore or work assignment shall not place the child in physical danger.

(b) A chore assignment shall be posted within the child's living quarters.

(c) A child may be given a job in compliance with child labor laws for which he receives payment that shall be clearly differentiated from a chore expected of him to be completed in relation to the routine of daily living.

(d) A work assignment outside of a daily routine chore at the child-caring facility shall not be used as a form of punishment. An additional chore assignment beyond what is regularly assigned to a child may be:

1. Performed as restitution for intentional property damage made by the child; or

2. Given to a child for violation of a child-caring facility rule upon mutual agreement between the child and supervisory child-caring staff without the child being coerced to enter into an agreement.

(e) A child shall be given a rest period of at least ten (10) minutes during each hour worked.

(f) Use of a child to perform a chore or work assignment shall not negate the child-caring facility's ultimate responsibility for the maintenance of the child-caring facility nor the employment of staff sufficient to maintain the child-caring facility.

(10) ~~(9)~~ Discipline.

(a) A child-caring facility shall have written policy and procedure governing disciplinary action.

(b) Discipline shall be:

1. Utilized as an educational tool and be related to the child's actions initiating the disciplinary process; and

2. Consistent with the child's ITP and in response to the child's lack of control or misbehavior.

(c) A group of children shall not be punished due to the misbehavior of one (1) or more individual group members.

(d) The following practices shall not be allowed:

1. Cursing;

2. Screaming;

3. Name calling;

4. Threatening of physical harm;

5. Intimidation;

6. Humiliation;

7. Denial of food or sleep;

8. Corporal physical discipline, in accordance with ~~[pursuant to]~~

KRS 199.640(6);

9. Hitting;

10. Unnecessarily rough handling;

11. Other physical punishment; or

12. Denial of visitation with family or custody holder as punishment.

(e) With the exception of a parent disciplining a child, a child shall not directly discipline another child.

(f) Handcuffs, weapons, mechanical restraining, chemical restraints, or other restraint devices shall not be used.

(g) A child placed in a time-out area shall be:

1. In sight or hearing of staff; and

2. Checked by staff at least every five (5) minutes until it is determined the child is ready to continue normal activity.

~~(h) Therapeutic hold shall be used only;~~

~~1. After attempts to deescalate the situation have been made;~~

~~2. By trained staff; and~~

~~3. To prevent:~~

~~a. A child from injury to self or others; or~~

~~b. Serious property damage or disruption of the child-caring facility's program.~~

~~(i) Therapeutic hold shall not be used as:~~

~~1. Punishment; or~~

~~2. For the convenience of staff.~~

~~(j) In a child-caring facility where therapeutic hold is used, the child-caring facility shall:~~

~~1. Develop and maintain clearly written policy and procedure governing the use of therapeutic hold of a child, including a requirement for a de-escalation plan in the child's ITP that is to be utilized before therapeutic hold is applied; and~~

~~2. Require for staff members who conduct therapeutic holds, as part of the forty (40) hour annual training program established in Section 3(6)(b)2 of this administrative regulation, at least sixteen (16) hours of training in approved methods of de-escalation and therapeutic hold.~~

~~(k) The program director shall review and analyze instances of therapeutic hold in order to:~~

~~1. Assure compliance with child-caring facility policy; and~~

~~2. Provide documentation of a plan of action to prevent injury to a child or staff as a result of the use of therapeutic hold.]~~

Section 7. Child-caring Program Services. (1) Admissions and intake.

(a) The child-caring facility shall have clearly defined written policy and procedure for an admission that identifies the age, sex, and detailed description of the type of child served.

(b) Acceptance of a referral shall be based on the assessment that the child's need is one that:

1. The service of the child-caring facility is designed to address; and

2. Cannot be met in a less restrictive setting.

(c) The child-caring facility shall not accept into care a child for whom a service cannot be provided based on the child-caring program's mission statement and its available resources.

(d) The child-caring facility shall have a written placement agreement with the child's custodian.

(e) There shall be a preadmission interview with the child.

(f) The following information regarding the child shall be obtained by the child-caring facility from the child's custodian during intake, or it shall be documented that the information was requested and not available:

1. Commitment order or signed voluntary admission form;

2. Verification of birth;

3. Immunization record; and

4. Social history and needs assessment that includes medical, educational, developmental, and family history.

(g) A written consent pertaining to the child's care shall be obtained from the child's custodian for:

1. Photograph, video, and audio tape;

2. Emergency and routine medical care; and

3. Release of case record information.

(h) Before admission, the child and custodian shall be informed in writing of their rights and the child-caring facility's responsibilities, including policy pertaining to services offered to the child.

(i) A child shall be informed upon admission of the right to file a grievance.

(j) Upon admission, the child shall be oriented to life at the child-caring facility, including rules and consequences for violation of the rules.

(2) Casework planning.

(a) The child-caring facility shall have written policy and procedure for the ITP process including:

1. Assessment;

2. Assignment;

3. Designation of a case coordinator; and

4. Development, implementation, and evaluation of the ITP and family involvement.

(b) An initial assessment shall be completed by designated staff within twenty-four (24) hours of admission to include:

1. Identifying information;

2. Presenting problem;

3. History (developmental, social, emotional health, education);

and

4. Current level of functioning including strengths and weakness.

(c) An initial ITP shall be developed by designated staff and implemented within twenty-four (24) hours of admission.

(3) Comprehensive assessment and treatment plan.

(a) A comprehensive emotional and behavioral assessment of a child shall be completed by the treatment team and entered in the case record within twenty-one (21) days of admission, including the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;

2. The child's current emotional, behavioral, and developmental functioning, including strengths and weakness;

3. A psychiatric or psychological evaluation if recommended by the treatment team;

4. Other functional evaluation of language, self-care, social effectiveness, and visual-motor functioning, if recommended by the treatment team;

5. Social assessment that includes:

a. Environment and home;

b. Religion;

c. Ethnic group;

d. Developmental history;

e. Family dynamics and composition; and

f. Education; and

6. Recommendation for provision of treatment.

(b) A coordinated treatment team approach shall be utilized in the development, implementation, and evaluation of a comprehensive ITP.

(c) A comprehensive ITP shall be developed and implemented, in accordance with KRS 199.640(5)(a)4, to improve child functioning based upon the individual need of the child, and the child's family if appropriate, and shall include at least the following components:

1. ~~[Short-term and long-term]~~ Goals and objectives for permanence;

2. Time frame projected for completion of each goal and objective;

3. Method for accomplishing each goal and objective, including utilization of community providers;

4. Person responsible for completion of each goal and objective; and

5. Projected discharge date and placement plan.

(d) The comprehensive ITP shall be developed within twenty-one (21) days of admission.

1. A treatment team review of the child's and family's progress toward meeting each treatment goal shall occur at least monthly.

2. Every effort shall be made to involve the child and his family in the monthly treatment team review.

3. Treatment team evaluation of the comprehensive ITP shall occur at least quarterly.

4. An additional assessment shall be completed upon the recommendation of the treatment team.

5. Evaluation and assessment information shall be documented and maintained in the child's record.

(e) The child shall be offered the opportunity to sign an ITP and ITP review, signifying understanding of the ITP.

1. If the child refuses to sign or is developmentally unable to understand the circumstance, this shall be documented in the record.

2. The child and his family or custodian shall receive a copy of the ITP.

(4) Treatment environment. The daily child-caring program shall be planned in the following manner in order to create an atmosphere conducive to treatment:

(a) The child-caring facility shall have written policy and procedure describing its daily routine, rules, activity, and child and staff interaction.

(b) The daily child-caring program shall be:

1. Planned to provide a framework for daily living; and

2. Reviewed and revised as the needs of the individual child or living group change.

(c) The daily routine shall be written and available to each child.

(d) Each rule shall be clearly stated in language that a child can understand.

(e) Staff shall interact with a child in a warm, supportive, constructive, and confidential manner and shall treat the child with respect.

(f) Counseling and interviewing a child and the child's family shall be conducted in a private area.

(g) A daily recreational activity shall be available to promote mastery of:

1. Developmental tasks;

2. Development of relationships; and

3. Increase in self-esteem, in accordance with the child's ITP.

(h) The child-caring facility shall provide recreational equipment, maintained in usable and safe condition, to implement the recreational program.

(5) The child-caring facility shall make available a quality program for substance abuse prevention and treatment in compliance with KRS 199.640(5)(a)7.

(6) Discharge and aftercare.

(a) The child-caring facility shall have written policy and procedure that describe the condition under which a child may be discharged, including criteria for an unplanned or emergency discharge and a discharge inconsistent with the ITP.

(b) The approval of the program director shall be required for an unplanned or emergency discharge.

(c) Discharge planning shall begin with the development of the ITP and shall continue throughout subsequent ITP reviews. The treatment team shall consider the following matters related to discharge planning:

1. Identification of placement;

2. Community resources to provide support for youth; and

3. Family services.

(d) When a child is leaving a facility as a planned discharge, a predischarge conference shall be held to ensure that the child and family are prepared for successful transition into placement. The parent, guardian or custodian, the child, and the treatment team shall attend this conference.

(e) The child shall have at least one (1) preplacement visit prior to the planned discharge, or the facility shall document unsuccessful efforts to arrange a visit.

(f) The child-caring facility shall prepare a written discharge summary within fourteen (14) days following the date of discharge. A copy shall be provided to the custody holder. The summary shall include:

1. Information related to progress toward completion of each ITP goal;

2. Each barrier to treatment;

3. Each treatment method used in working with the child;

4. Date of discharge;

5. Reason for discharge; and

6. Name, telephone number and address of person or child-caring facility to whom the child was discharged.

(g) An aftercare service shall be provided to a child where no other agency has responsibility for the child's transition or adjustment to a new environment. Upon discharge, the following needs of the child shall be assessed and a referral made for needed aftercare service:

1. Educational;

2. Medical;

3. Vocational;

4. Psychological;

5. Legal; and

6. Social.

(7) Case record. The child-caring facility shall:

(a) Maintain, in a confidential and secure manner, a current case record on each child, including:

1. Identifying information on the child to include:

a. Name, ethnic origin and gender;

b. Date of birth and Social Security number;

c. Former residence;

d. Name, address, and occupation of each parent, if available;

e. Date of admission; and

f. Type of commitment;

2. Commitment order or custodian's consent form for admission;

3. Birth and immunization certificates;

4. Education;

5. Medical and dental records that may be maintained separately from the case record;
6. Assessment data or social history;
7. ITP and each review;
8. Each incident report;
9. Chronological recording;
10. Correspondence with court, family, and custody holder;
11. Discharge summary; and
12. Written consent;
- (b) Document, at least weekly, progress made by the child and his family toward meeting the treatment goal;
- (c) Record the aftercare service it provides until the service is terminated;
- (d) Have a written policy regarding maintenance, security, and disposal of a case record maintained by, or in possession of, the child-caring facility;
- (e) Not disclose information concerning a child or his family to a person not directly involved in the case, without the written consent of the custodian of the child;
- (f) Immediately forward a request ~~(is)~~ made by an individual or an agency to review the case record of a committed child, to the Commissioner, Department for Community-Based Services, Cabinet for Families and Children, or other legal custodian ~~(custody holder)~~;
- (g) With the exception of a sealed adoptive record, release identifying or personal information including a Social Security card, birth certificate, or driver's license to the child at discharge;
- (h) After the discharge of a child:
  1. Maintain the case record at the child-caring facility for at least three (3) years; and
  2. After three (3) years, the child-caring facility may archive the case record and have it transferred by the cabinet to one (1) of the designated record centers; or
  3. Maintain the case record permanently at the child-caring facility;
- (i) If the child-caring facility ceases to operate, transfer the case record to the Cabinet for Families and Children;
- (8) The cabinet shall maintain a file on each record transferred to one (1) of its record centers. The file shall include the following information:
  - (a) The child's name, case number, date of birth; and
  - (b) Date the case record was sent to the cabinet.
- (9) All records maintained by the child-caring facility shall be made available to the cabinet or designee upon request.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 4, 2002

FILED WITH LRC: March 7, 2002 at 3 p.m.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community Based Services**  
**Division of Policy Development**  
**(As Amended at ARRS, May 14, 2002)**

**922 KAR 1:305. Licensure of child-caring facilities and child-placing agencies.**

RELATES TO: KRS 199.011(2), (3), (4), (6), (7), 199.640, ~~199.641(1)(b)~~, 199.670, 199.990, 600.020(8) to (10) ~~(5), (7)~~, 610.110(6)

STATUTORY AUTHORITY: KRS 194B.050(1), 199.640(5)(a),

(c) **NECESSITY, FUNCTION, AND CONFORMITY:** KRS 199.640(5)(c) authorizes the Cabinet for Families and Children to promulgate administrative regulations relating to licensure for child-caring facilities and child-placing agencies.

Section 1. Definitions. (1) "Advisory board" means a group of citizens, approved by the board of directors, who gives advice, counsel, and support to a child-caring facility or a child-placing agency.

(2) "Cabinet" is defined at KRS 199.011(2).

(3) "Child" is defined at KRS 199.011(4), 600.020(8) ~~(5)~~, and

610.110(6).

(4) "Child-caring facility" is defined at KRS 199.011(6) and 600.020(9) ~~199.641(1)(b)~~.

(5) "Child-placing agency" is defined at KRS 199.011(10) ~~(7)~~.

(6) "Division" means the Division of Licensed Child Care ~~Licensing and Regulation~~, Office of the Inspector General, Cabinet for Health Services.

(7) "Licensee" means an individual, partnership, corporation or other entity authorized to operate a child-caring facility or child-placing agency, including a board of directors and a person authorized to make application.

Section 2. Initial Application. (1) An applicant for a license shall submit to the division a:

- (a) Completed Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency, Form OIG 136;
  - (b) Licensure fee designated in KRS 199.640(4) ~~(of \$100)~~;
  - (c) Copy of the Articles of Incorporation on file with the Secretary of State, if the applicant is a corporation;
  - (d) Mission statement of purpose, objective, scope of service provided, and intake policy specifying the type of child to be accepted for care;
  - (e) Copy of the constitution and bylaws;
  - (f) List of officers, board members, and advisory board members, if any, including the address and profession;
  - (g) Name and title of each officer and the term of office; and
  - (h) List of staff including position or title and qualifications.
- (2) A license issued by the division shall be:
- (a) For a specific physical location within the state;
  - (b) For operation by a specific licensee;
  - (c) Nontransferable;
  - (d) Approved and documented by the State Fire Marshal before a licensure survey is conducted; and
  - (e) Awarded if (when) an on-site inspection, described in (pursuant to) Section 6 of this administrative regulation, results in:

1. A determination that the applicant qualifies for licensure as established in (pursuant to) 922 KAR 1:300 or (and) 922 KAR 1:310; or

2. An [A-Has- submitted] (an) acceptable plan of correction described in (pursuant to) Section 4 of this administrative regulation, if applicable.

(3) [A child-caring facility or a child-placing agency shall not begin operation without a license to operate from the division.]

(4) A child-caring facility or a child-placing agency operating without a license shall be subject to legal action, pursuant to KRS 199.990.

Section 3. Renewal Licensure. Relicensure shall be in accordance with KRS 199.640(3), and shall require the following procedures: [The child-caring facility and the child-placing agency shall be relicensed annually from the date of issuance of the original license.]

(1) The applicant shall submit a:

- (a) Completed Application for Licensure to Operate a Child-Caring Facility or a Child Placing Agency, Form OIG 136; and
- (b) Licensure fee designated in KRS 199.640(3) ~~(of fifty (50) dollars)~~.

(2) The applicant [facility or agency] shall provide the following documentation to the annual inspector:

- (a) A list of officers, board members, and advisory board members, if any, including address and profession;
  - (b) The name and title of each officer and term of office; and
  - (c) A list of staff that includes position or title and qualifications.
- (3) The child-caring facility or child-placing agency shall comply with its mission statement, program narrative, and applicable federal and state administrative regulations in regard to the program operation.

(4) The child-caring facility or child-placing agency shall have an annual financial audit completed by an independent accounting firm or a certified public accountant.

(5) Notification of a change in the following shall be made to the division in advance to allow for approval from the division, and the State Fire Marshal when applicable, before implementation:

- (a) Ownership or sponsorship;

(b) Location approval documented by the State Fire Marshal; or  
(c) Service type provision described in ~~[pursuant to]~~ 922 KAR 1:300 or ~~[and]~~ 922 KAR 1:310;

(d) Increase in capacity approval documented by the State Fire Marshal; and

(e) The addition of a new building or converting of administrative space to living space approval documented by the State Fire Marshal.

(6) A renewal license shall be issued by the division if ~~[when]~~ the division determines the applicant qualified for renewal licensure in accordance with ~~[pursuant to]~~ 922 KAR 1:300 or 922 KAR 1:310.

(7) The child-caring facility or child-placing agency shall post its license in a place visible to the public.

(8) A license shall not be sold or transferred.

(9) Change of ownership.

(a) A prospective new owner shall submit:

1. A Licensing and Regulation Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency, form OIG 136;

2. A fee as specified in Section 2(1)(b) of this administrative regulation; and

3. If the child-caring facility increases capacity, documentation of approval by the Office of the State Fire Marshal.

(b) The division shall perform an on-site inspection, pursuant to KRS 199.640(3) and (5).

(c) The effective date of a license granted on an application for change of ownership shall be:

1. For a child-caring facility or a child-placing agency that meets requirements of this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310, the date the child-caring facility or the child-placing agency is acquired by the new owner;

2. For a child-caring facility or a child-placing agency that does not meet requirements, the date that compliance with this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310 is achieved; or

3. For a child-caring facility requesting an increase in capacity, not before the approval date issued by the State Fire Marshal.

(10) Changes to the child-caring facility or the child-placing agency.

(a) A licensee shall notify the division, in writing, if there is a change to the child-caring facility or child-placing agency, as described in subsection (5) of this section.

(b) The notification shall be signed by each owner listed on the license application.

(c) A fee shall not be charged.

Section 4. Corrective Plans. (1) The division shall perform an on-site inspection, as required by ~~[pursuant to]~~ KRS 199.640(3) and (5). A regulatory violation of the standards identified in 922 KAR 1:300 or ~~[and]~~ 922 KAR 1:310 during inspection shall be reported to the child-caring facility or the child-placing agency in a written statement of deficiency. An applicant or licensee may request the opportunity to informally dispute a deficiency, pursuant to [as established by] [pursuant to] KRS 199.670(4).

(2) Unless a request for the opportunity to informally dispute a deficiency has been made, the child-caring facility or child-placing agency shall submit, within ten (10) days of receipt of the statement of deficiency, a written plan for the elimination or correction of a violation. The plan shall detail:

(a) Specific action undertaken to correct a violation;

(b) The date action was initiated; and

(c) Action utilized to assure ongoing compliance.

(3) The division shall review the plan and notify the child-caring facility or the child-placing agency, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the license, as described in ~~[pursuant to]~~ Section 7 of this administrative regulation.

(4) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(5) A child-caring facility or a child-placing agency notified of unacceptability of its plan shall, within ten (10) days of notification:

(a) Submit an amended plan; or

(b) Have its license revoked or denied.

(6) If the Cabinet for Health Services proposes to deny, suspend, or revoke an application or licensure ~~[an application or license has been denied, suspended, or revoked]~~, the division shall notify the applicant or licensee, in writing, of the right to request an informal dispute resolution meeting as required by ~~[pursuant to]~~ KRS 199.670(2).

(7) A license shall be issued as required by ~~[pursuant to]~~ KRS 199.640(4), if the child-caring facility or the child-placing agency has met the requirements of ~~[contained in]~~ this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310.

~~(8) A license shall not be sold or transferred.~~

~~(9) Change of ownership.~~

~~(a) A prospective new owner shall submit:~~

~~1. A Licensing and Regulation Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency, Form L&R 136;~~

~~2. A fee as specified in Section 2(1)(b) of this administrative regulation; and~~

~~3. If the child-caring facility increases capacity, documentation of approval by the Office of the State Fire Marshal;~~

~~(b) The division shall perform an on-site inspection, pursuant to KRS 199.640(3) and (5).~~

~~(c) The effective date of a license granted on an application for change of ownership shall be:~~

~~1. For a child-caring facility or a child-placing agency that meets requirements of this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310, the date the child-caring facility or the child-placing agency is acquired by the new owner;~~

~~2. For a child-caring facility or a child-placing agency that does not meet requirements, the date that compliance with this administrative regulation and 922 KAR 1:300 or 922 KAR 1:310 is achieved; or~~

~~3. For a child-caring facility that increases capacity, not before the approval date issued by the State Fire Marshal.~~

~~(10) Changes to the child-caring facility or the child-placing agency.~~

~~(a) A licensee shall notify the division, in writing, if there is a change to the child-caring facility or child-placing agency, pursuant to Section 3(5) of this administrative regulation.~~

~~(b) The notification shall be signed by each owner listed on the license application.~~

~~(c) A fee shall not be charged.~~

~~(11) The license shall be posted in a conspicuous place in the child-caring facility.~~

~~(12) A child-caring facility or a child-placing agency shall not begin operation without a license to operate from the division.~~

~~(13) A child-placing agency or a child-caring facility operating without a license shall be subject to legal action.]~~

Section 5. Fees. (1) A licensing fee shall be charged as required by ~~[pursuant to]~~ KRS 199.640(4).

(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the licensure application.

(3) A fee shall not be refunded if an inspection has been made by the division or the State Fire Marshal's Office.

Section 6. Inspection. (1) Inspection of a licensed child-caring facility or child-placing agency shall be made as described in ~~[pursuant to]~~ administrative regulations established by authority of KRS 199.640(3) and (5)(d); and

(2) A human services surveyor or other representative of the division shall have access to the child-caring facility or child-placing agency at any time.

Section 7. Basis for Denial, Suspension or Revocation. (1) The division shall deny an application or suspend or revoke a license if the applicant or the licensee:

(a) Fails to meet the requirements of this administrative regulation or those of 922 KAR 1:300 or 922 KAR 1:310; or

(b) Has been convicted:

1. Of a sexual offense designated in KRS Chapter 510, 529.020 to 529.050, 530.020, 530.064, or 531.300 to 531.370;

2. Of a crime of abuse, neglect or exploitation of a child, as established in KRS 508.100 to 508.120; or

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3. As a violent offender, established in ~~[pursuant to]~~ KRS 17.165(2); or

(c) Is listed on the central registry as described in 922 KAR 1:470. ~~[Has an allegation of abuse or neglect of a child, as defined at KRS 600.020(1), substantiated by the cabinet pursuant to 922 KAR 1:330 and, if appealed, 922 KAR 1:320; or~~

~~(d) Has been listed on the Nurse's Aid Abuse Registry by the Kentucky Board of Nursing.]~~

(2) Effect of denial or revocation. The division shall not accept an application to operate a child-caring facility or a child-placing agency from an entity that:

(a) ~~[Was]~~ Previously had a license denied, suspended, or revoked for a reason ~~[as]~~ described in ~~[pursuant to]~~ subsection (1)(b) of this section; or

(b) Within the previous five (5) years, voluntarily forfeited a license after the cabinet initiated denial or revocation action.

**(3) A penalty for violation of this administrative regulation shall be determined by reference to KRS 199.990.**

Section 8. Right of Appeal. (1) If an application or license has been denied, suspended, or revoked, the division shall proceed in accordance with KRS 199.670(2) and (3).

(2) If, within fifteen (15) days after receiving notice of the division's action, the applicant or licensee requests a hearing, the division shall:

(a) Appoint a hearing officer; and

(b) Proceed ~~pursuant to [as established by]~~ ~~[pursuant to]~~ KRS 13B.050.

(3) The cabinet may take emergency action ~~pursuant to [as established in]~~ ~~[pursuant to]~~ KRS 199.670(3).

Section 9. Incorporation by Reference. (1) "OIG 136, [Application for Licensure to Operate a Child-Caring Facility or a Child-Placing Agency]", March, 2002" [2000], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 4, 2002

FILED WITH LRC: March 7, 2002 at 3 p.m.

**CABINET FOR FAMILIES AND CHILDREN**  
Department for Community Based Services  
Division of Policy Development  
(As Amended at ARRS, May 14, 2002)

**922 KAR 1:380. Standards for emergency shelter child-caring facilities.**

RELATES TO: KRS 199.011~~(2), (3), (4), (6), (7), (10), (11)],~~  
199.640, 199.645 to 199.670, 214.034(4), 600.020, 610.110,  
615.010, 615.030, 615.040

STATUTORY AUTHORITY: KRS 194B.050(1), 199.640(5),  
199.645, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.640 (5) requires the Cabinet for Families and Children to promulgate administrative regulations relating to standards of care and service for child-caring facilities. This administrative regulation establishes standards of care and service for emergency service child-caring facilities.

Section 1. Definitions. (1) "Child" is defined at KRS 199.011(4), 600.020(8) ~~[(5)],~~ and 610.110(6).

(2) "Crisis intervention unit" means a unit operated to serve a child in need of short-term intensive treatment and to avoid risk of placement to a higher level of care.

(3) "Emergency shelter" means a group home or similar homelike facility that provides temporary or emergency care for children and has adequate staff and services to meet the needs

of each resident child. [is defined at KRS 600.020(23) [(19)].]

(4) "Treatment" means individualized management and care of a child utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving his emotional conflict or behavioral disorder.

Section 2. Administration and Operation. (1) Licensing procedures. Licensing procedures for an emergency child-caring facility shall be administered as established in ~~[pursuant to]~~ 922 KAR 1:305.

(2) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:300, except for the following ~~[sections]~~ ~~[provisions]:~~

(a) Section 5(1)(d)2;

(b) ~~[Section 5(1)(d)3a through e;~~

~~(c) Section 5(1)(l)1, 3 and 4;~~

(c) ~~[(4)]~~ Section 5(1)(k);

(d) ~~[(e)]~~ Section 5(1)(n)4;

(e) ~~[(4)]~~ Section 5(1)(o);

(f) ~~[(a)]~~ Section 7(1)(e);

(g) ~~[(4)]~~ Section 7(2)(a);

(h) ~~[(4)]~~ Section 7(2)(b)3 and 4;

(i) ~~[(4)]~~ Section 7(2)(c);

(j) ~~[(4)]~~ Section 7(3);

(k) ~~[(4)]~~ Section 7(4)(a);

(l) ~~[(4)]~~ Section 7(5); and

(m) ~~[(4)]~~ Section 7(6)(c), (d), (e), and (g).

Section 3. Emergency Shelter Child-caring Facility Services. (1) An emergency shelter child-caring facility that is part of a program offering a treatment service shall be in compliance with 922 KAR 1:390, Section 4, ~~regarding the physical plant].~~

(2) If an emergency shelter care program is part of a larger organization providing other child-caring or child-placing services in accordance with ~~[pursuant to]~~ 922 KAR 1:310, there shall be a person designated to serve as coordinator of the emergency shelter child-caring facility.

(3) **The facility shall obtain** the following information ~~regarding a [the] child shall be obtained by the emergency shelter child-caring facility]~~ from a ~~[the]~~ child's custodian during intake:

(a) Commitment order, temporary custody order, or signed voluntary admission form;

(b) Basic identifying information on ~~the [a] [the]~~ child including:

1. Name and birthdate;

2. Address, and name and address of parent or guardian;

3. Last school attended and grade level; and

4. Medical information if known;

(c) If a ~~[the]~~ child is a walk-in to the program and no custodian is available, a ~~[an [the] emergency shelter child-caring]~~ facility shall obtain a placement agreement with the custodian within seventy-two (72) hours.

(4) Discharge.

(a) The ~~[emergency child-caring]~~ facility shall have written policy and procedure **describing [that describe]** conditions under which a child may be discharged.

(b) Discharge planning shall begin immediately upon admission of a child.

(c) The ~~[emergency shelter child-caring]~~ facility shall prepare a written discharge summary within five (5) days following the date of discharge. A copy shall be provided to the legal custodian [custody holder].

Section 4. Crisis Intervention Unit. An emergency service in a crisis intervention unit shall be provided as established in [pursuant to] 922 KAR 1:390, Section 5.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: December 13, 2001

FILED WITH LRC: December 14, 2001 at 11 a.m.



CABINET FOR FAMILIES AND CHILDREN  
Department for Community Based Services  
Division of Policy Development  
(As Amended at ARRS, May 14, 2002)

922 KAR 1:390. Standards for residential child-caring facilities.

RELATES TO: KRS 199.011(2), (3), (4), (6), (7), (10), (11), 199.640, 199.645 to 199.670, 214.034(4), Chapter 424, 600.020, 610.110(6), 615.010, 615.030, 615.040

STATUTORY AUTHORITY: KRS 194B.050(1), 199.640(5), ~~199.641~~ 199.645, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.640(5) requires the Cabinet for Families and Children to promulgate administrative regulations relating to standards of care and service for child-caring facilities. This administrative regulation establishes standards of care and service for residential child-caring facilities.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Families and Children.

(2) "Child" is defined at KRS 199.011(4), 600.020(8) ~~(5)~~, and 610.110(6).

(3) "Child-caring facility" is defined at KRS 199.011(6) ~~and 199.641(1)(b)~~.

(4) "Child-caring program" means the method of delivering a child-caring service.

(5) "Community resources" means a service or activity available in the community that supplements those provided by the child-caring facility in the care and treatment of a child.

(6) "Crisis intervention unit" means a unit operated to serve a child in need of short term intensive treatment and to avoid risk of placement to a higher level of care.

(7) "De-escalation plan" means a treatment method used to decrease the intensity of emotional conflict or aggressive behavior.

(8) "Executive director" means the person employed by the board of directors to be responsible for the administration and management of a child-caring facility. ~~[an executive director as defined at 922 KAR 1:300, Section 4(18)]~~

(9) "Family residential treatment program" means a residential treatment facility providing an intensive professional assessment and intensive treatment-oriented services provided by a residential treatment facility to a family unit in order to prevent out-of-home placement, or to facilitate family reunification.

(10) ~~(8)~~ "Group home" is defined at KRS 199.011(10).

(11) ~~(9)~~ "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(12) ~~(10)~~ "Latching device" means an instrument used to secure a seclusion room door that does not require the use of a key or combination.

(13) ~~(11)~~ "Living unit" means a building or part of a building in which a child resides, containing not exceeding sixteen (16) or fewer beds.

(14) ~~(12)~~ "Residential child-caring facility" means an institution or group home providing twenty-four (24) hour care.

(15) ~~(13)~~ "Residential treatment program" means a residential facility providing an intensive professional treatment-oriented service provided by a residential facility.

(16) ~~(14)~~ "Seclusion room" means the temporary placement of a child in a room in a residential treatment facility to prevent harm to the child for the temporary seclusion of a child in danger of harming himself or others.

(17) ~~(15)~~ "Treatment" means individualized management and care of a child, utilizing professionally credentialed and certified staff, and a component of the treatment environment to assist the child in resolving his emotional conflict or behavioral disorder.

(18) ~~(16)~~ "Treatment director" means an individual who: ~~(a) oversees the day-to-day operation of the treatment program;~~

~~(b) Holds at least a master's degree in a human services discipline; and~~

~~(c) Has at least five (5) years' experience in mental health treatment of children with emotional or behavioral disabilities and~~

~~their families.~~

(19) ~~(17)~~ "Treatment team" means a representative group of people who provide services to the child and the child's family.

Section 2. Administration and Operation. (1) Licensing procedures. Licensing procedures for a residential child-caring facility shall be in compliance with 922 KAR 1:305 for a child-caring facility.

(2) A residential child-caring facility shall meet the requirements of 922 KAR 1:300, Sections 3 ~~(2) through (7) and 4~~ through 7.

Section 3. Residential Child-caring Facility Services. (1) The child-caring program services for a residential child-caring facility shall be in compliance with 922 KAR 1:300, Section 7.

(2) Unless a child is a member of a family group placed in a ~~residential child-caring~~ facility, a child under six (6) shall not be placed in the residential child-caring facility unless that facility is also licensed to provide emergency shelter service as established in ~~pursuant to~~ 922 KAR 1:380.

Section 4. Residential Treatment Program. The following additional requirements shall apply to a residential child-caring facility providing intensive treatment services.

(1) Professional treatment services.

(a) The facility shall secure needed services for a child who has an assessed need for a psychological, psychiatric, or other professional treatment service not provided by the residential child-caring facility.

(b) The admission decision shall be the responsibility of a treatment team comprised of clinical, social service, and other disciplines designated by the residential child-caring facility's treatment director.

(c) After assessment and development of the ITP in accordance with ~~pursuant to~~ 922 KAR 1:300, Section 7 ~~(2) and (3)~~, the treatment team shall identify services to meet the needs of the child and his family. The services shall be provided by the residential child-caring facility or arranged through contract with another qualified residential child-caring facility or child-placing agency, as established in ~~pursuant to~~ 922 KAR 1:310, or a treatment professional and shall include, as developmentally appropriate, a minimum of weekly:

1. Individual counseling from a social worker or other treatment professional; and

2. Group counseling conducted by a trained social worker or other treatment professional as determined appropriate by the treatment team and under the supervision of the treatment director.

(d) Other services ~~that are~~ identified after the assessment and development of the ITP by the treatment team may include:

1. Psychiatric counseling;

2. Specialized therapy recognized by mental health credentialing authority; or

3. Family counseling.

(e) A residential child-caring facility shall become accredited by a nationally recognized accreditation organization before October 2004 (within four (4) years of the effective date of this administrative regulation) or within two (2) years of (upon the) initial issuance of a license for treatment.

(2) Staffing requirement.

(a) The child-caring facility shall maintain a staff-to-child ratio of at least one (1) child care staff member to six (6) children during the child's waking hours, and one (1) child care staff member for every twelve (12) children in a living unit during nonwaking hours. At least one (1) staff member in each living unit shall remain awake during children's sleeping hours.

(b) The treatment director shall:

1. Hold at least a master's degree in a human service discipline; and

2. Have at least five (5) years experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for the:

a. Supervision;

b. Evaluation; and

c. Monitoring of the:

(i) Treatment program;

(ii) Social work; and

(iii) Other treatment staff.

(c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(d) ~~(c)~~ A residential child-caring facility providing a treatment service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director, if at least fifty (50) percent of his duties are spent supervising the treatment program. If an employee serves as both executive director and treatment director, the higher staff qualification shall apply.

(3)(a) When seclusion is used, ~~[Seclusion room]~~ ~~(a)~~ a residential child-caring facility shall:

1. Before a child is placed in seclusion, develop and maintain clearly-written policy and procedures governing the placement of a child in seclusion, including a requirement for a de-escalation plan in the child's ITP; ~~[that is to be utilized.]~~

2. Provide a copy of the policy and procedures to staff members responsible for placement of a child into seclusion; and

3. Require a ~~[for]~~ staff member ~~[members]~~ who ~~uses~~ ~~[utilizes]~~ ~~[utilize the use of]~~ seclusion ~~[.]~~ as part of the forty (40) hour annual training program established in 922 KAR 1:300, Section 3, to complete at least ~~[with]~~ ~~[a minimum of]~~ sixteen (16) hours of training in approved methods of de-escalation and the use of seclusion, from a nationally-recognized accreditation organization approved by the cabinet, to include:

- Assessing physical and mental status, including signs of physical distress;
- Assessing nutritional and hydration needs;
- Assessing readiness to discontinue use of the intervention;

and

d. Recognizing when medical or other emergency personnel are needed. ~~[have clearly defined written policy and procedure for placement of a child into a seclusion room.]~~

(b) Seclusion ~~[A seclusion room]~~ shall:

1. ~~[be used]~~ ~~[utilized]~~ only in an emergency or crisis situation when:

- A ~~[if]~~ ~~[the]~~ child is in danger of harming himself or another; and
- The effort made to de-escalate the child's behavior prior to placement was ~~[has been]~~ ineffective.

(c) Seclusion shall not be used for ~~[as]~~:

- Punishment;
- Discipline; or
- ~~[For the]~~ Convenience of staff.

(d) ~~[.]~~ and

2. ~~Not be utilized as punishment or for the convenience of staff.~~

(e) Approval from the treatment director or treatment staff designee as established in ~~[pursuant to]~~ 922 KAR 1:300, Section 3(4)(b), shall be obtained prior to or within fifteen (15) minutes of the ~~[individual]~~ placement of a child in seclusion ~~[into a seclusion room]~~.

(f) ~~(d)~~ More than one (1) child shall not be placed into the same seclusion room at a time.

(g) ~~(e)~~ An object that may be used for self harm shall be removed from the child before he is placed in seclusion ~~[into the seclusion room]~~.

(h) ~~(f)~~ Except for a belt and shoes, a child's clothing shall not be removed while he is placed in seclusion ~~[into a seclusion room]~~.

(i) ~~(g)~~ Within a twenty-four (24) hour period of time, the maximum amount of time that a child remains in latched seclusion shall not exceed the following:

- Age nine (9) and younger, fifteen (15) minutes; and
- Age ten (10) and older, one (1) hour.

(j) ~~(h)~~ A child shall not be placed into a seclusion room with a latching device for longer than one (1) hour within a twenty-four (24) hour period. If a child's ~~[his]~~ behavior is stabilized, the child shall be released from seclusion prior to the time period specified in this section ~~[in less than one (1) hour]~~.

(k) ~~(i)~~ If a child requires repeated placement in seclusion ~~[into a latched seclusion room]~~, a treatment team meeting shall be conducted by the treatment director to reassess the child's ITP, including referring the child to a higher level of care.

(l) ~~(j)~~ Staff shall have a copy of the policy and procedure for placement of a child into a seclusion room.

(m) ~~(k)~~ Staff employed by a residential treatment facility that utilizes a

seclusion room shall have training in the proper use of the seclusion room. The training requirements may be included as part of the forty (40) hour annual training pursuant to 922 KAR 1:300, Section 3(6)(b)2.

(k) A staff member shall observe visually a child who is in seclusion ~~[visually]~~ every five (5) minutes.

(l) Seclusion shall be discontinued if a child displays adverse side effects including:

- Illness;
- Severe emotional or physical stress; or
- Physical damage.

(m) A child ~~[that is]~~ in seclusion shall be provided with food, water, and access to a lavatory.

(n) Staff shall document, in the child's record, the following information regarding ~~[the]~~ seclusion of a child ~~[room]~~ ~~[in the child's record]~~:

- An intervention to de-escalate the child's behavior prior to placement;
- Date and time of placement;
- Date and time of removal;
- Reason for placement;
- Name of each staff member involved;
- Treatment director's or designee's approval;
- Five (5) minute visual observation by staff of the child's placement; and
- Intervention provided by treatment staff when the child leaves ~~[the]~~ seclusion ~~[room]~~.

(o) ~~(m)~~ A room used for ~~[a]~~ seclusion ~~[room]~~ shall be:

- Lighted, ventilated, and maintained at a temperature consistent with the rest of the child-care facility;
- Internally observable if the door is closed;
- At least fifty-six (56) square feet in size; and
- Free from an object that allows the child to do self-harm.

(p) ~~(n)~~ Immediately upon the child's exit from ~~[a]~~ seclusion ~~[room]~~, treatment staff shall provide therapeutic intervention.

(q) ~~(o)~~ Exclusive of weekends and holidays, within forty-eight (48) hours of placement in seclusion:

- an incident report shall be:
- Completed by designated treatment staff; ~~[and]~~
- Reviewed no later than one (1) working day after its use; and
- Signed by the treatment director or designee and the program director or designee.

(r) Staff shall have visual contact with a child in latched seclusion at all times.

Section 5. Crisis Intervention Unit. (1) An emergency service provided in a crisis intervention unit shall include the following:

(a) A mental status evaluation and physical health questionnaire of the child upon admission;

(b) A treatment planning process;

(c) Procedure for crisis intervention; and

(d) Discharge and aftercare planning processes.

(2) A program shall have a written policy concerning the operation of a crisis intervention unit.

(a) Staffing.

1. At least one (1) direct-care staff member shall be assigned direct-care responsibility for:

a. ~~[Each]~~ Four (4) children during normal waking hours; and

b. ~~[Each]~~ Six (6) children during normal sleeping hours. ~~[.]~~

2. Administrative oversight of the program shall be provided by a staff member who shall be a:

a. Treatment director; or

b. Person qualified to be executive director ~~[as defined in]~~ ~~[pursuant to]~~ 922 KAR 1:300, Section 1(1)(18).

(b) ~~[The service of]~~ A licensed psychiatrist shall be available to evaluate, provide treatment, and to participate in the treatment planning.

(c) Intake and service.

1.a. Upon admission, the crisis intervention program shall provide the child and his parent, guardian, or other legal representative with a clearly written and legible statement of rights and responsibilities; or

b. If unable to read the statement of rights and responsibilities, the statement shall be read to the child and his parent, guardian, or

other legal representative.

2. Written policy and procedure developed in consultation with professional and direct-care staff shall provide:

- a. For behavior management of a child, including the use of time-out; and
  - b. An explanation of behavior management techniques to a child and his parent, guardian, or other legal representative.
- (3) The crisis stabilization unit shall prohibit the use of [a]:
- (a) Seclusion [room]; or
  - (b) Mechanical restraint.

Section 6. Family Residential Treatment Program. The following additional requirements shall apply to one (1) pilot family residential treatment program in Fayette County for providing intensive family in-residence treatment services.

(1) The child-caring facility may provide services for a family when deemed appropriate following the completion of a comprehensive family and risk assessment to include consideration of:

- (a) The child's permanency plan;
- (b) History of abuse or neglect;
- (c) History of violent and aggressive behavior;
- (d) History of domestic violence;
- (e) History of substance abuse;
- (f) History of mental health problems;
- (g) Developmental history of child;
- (h) History of family needs;
- (i) Whether parenting skills are adequate;
- (j) Quality of caregiver to child relationship;
- (k) Medical history of each family member; and
- (l) Legal history of each family member.

(2) Staff qualifications and training. An intensive family residential treatment program shall employ or have on contract a therapist with the appropriate licensure or certification and evidence of training in the following areas:

- (a) Family dynamics and family therapy;
- (b) Substance abuse;
- (c) Domestic violence; and
- (d) Attachment issues.

(3) Staff that have direct contact and supervision of a family shall have orientation and training in the following:

- (a) Attachment and nurturing issues;
- (b) Parenting skills;
- (c) Basic knowledge of child development;
- (d) Identification of signs of domestic violence, substance abuse, child abuse and neglect; and
- (e) Adult intervention strategies and conflict resolution.

(4) The training requirements listed in subsection (3)(a) through (e) of this section may be included as part of the forty (40) hours of annual training [as] established in 922 KAR 1:300, Section 3(6)(o).

(5) Except for adults, staffing requirements established in Section 4(2)(a) of this administrative regulation shall be maintained on the family living unit. (Staffing requirements.

(a) There shall be sufficient staff to meet family needs twenty-four (24) hours a day based on the:

1. Number of families;
2. Need for assistance by a families; and
3. Type of services delivered.

(b) If there are multiple twenty-four (24) hour [hours] programs operated in the same facility, the staff of all programs may be used to meet the staffing requirements.]

(6) Unless there is imminent danger to staff, child, or an adult member of a family, physical restraint shall not be used.

(7) The living unit shall be a distinct and separate part of the facility or housed in a separate building and shall be monitored by staff or electronic surveillance on a twenty-four (24) hour basis. [A family that is housed on site shall be provided a living unit and treatment separately from other programs within the child-caring facility.]

(8) A family treatment plan shall be developed for each family [who receives intensive family in-residence treatment services.] with the needs of each family member addressed and a description of how those needs will be met.

(9) A family member with a history of aggressive behavior or sexual acting-out shall be assessed by the treatment team

prior to admission.

(10) The treatment team shall develop a safety plan with each family to ensure the safety of all residents at the facility.

(11) Sleeping arrangements shall be specified in the family's treatment plan.

(12) Facility policy shall ensure the safety of staff, family members, and residents.

Section 7. Group Home. The following additional requirements shall apply to a group home program.

(1) Documentation of evidence of publication of a "notice of intent" in an area newspaper, in accordance with [pursuant to] KRS Chapter 424, advertising that:

(a) A public hearing shall be held if requested by citizens in the community or an appropriate local governmental entity; and

(b) Information obtained at the hearing shall be made available to the public and the cabinet.

(2) A staff-to-child ratio of one (1) child-caring staff member for each four (4) children. An on-duty staff member who is away from the group home with a child shall be included for the computation of this ratio.

(3) Documentation of the use [utilization] of community resources and efforts to encourage a child to participate in community activities.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 4, 2002

FILED WITH LRC: March 7, 2002 at 3 p.m.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community Based Services**  
**Division of Policy Development**  
**(As Amended at ARRS, May 14, 2002)**

**922 KAR 2:090. Child care center [facility] licensure.**

RELATES TO: KRS Chapter 13B, 17.165, 199.892, 199.894, 199.896, [to] 199.898, 600.020(1), 42 USC 9801 et seq. [EO 2000-1104]

STATUTORY AUTHORITY: KRS 199.896(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.896(2) authorizes the Cabinet for Families and Children to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet, in consultation with the Cabinet for Health Services, Office of Inspector General, to establish an informal dispute resolution process. This administrative regulation establishes licensure requirements for child day care centers [facilities].

Section 1. Application. (1) An applicant for a license shall submit to the Cabinet for Health Services a completed Application for a License to Operate a Day Care Center, Form OIG-204.

(2) The issuance [Approval of an applicant for initial licensure shall result in the issuance of a provisional license for a six (6) month probationary period.

(3) A provisional license or renewal of a [regular] license shall be considered under the provisions of Section 5 of this administrative regulation.

(3) [(4)] If the applicant for licensure is:

(a) A corporation, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) A partnership, the application shall include a written statement from each partner that the partnership is current and viable.

(4) [(5)] If the status of a corporation, partnership, or ownership of the child care facility changes, the new entity shall submit an application for [provisional] licensure.

(5) [(6)] If ownership of a child care facility changes and the Cabinet for Health Services approves [provisional] licensure upon inspection of the facility under new ownership, the date on the [provisional] license shall be retroactive to the date of final sale.

Section 2. License Issuance. (1) A [provisional] license shall not

be issued unless [:

~~(a) In accordance with [pursuant to] KRS 199.896(3); and~~  
~~(b) After each background check required by KRS 199.896(19) has been completed on behalf of an applicant for licensure.~~

~~(2) A director, employee, or volunteer who submits to a voluntary background check at a child care center [facility]:~~

~~(a) May be employed or work with children on a probationary basis for up to 180 days, pending completion of a:~~

~~1. Child abuse or neglect central registry check described in 922 KAR 1:470; and~~

~~2. Criminal records check required by KRS 199.896(19); and~~  
~~(b) Shall not be left alone in the presence of a child if each required background check has not been completed.~~

~~(3) Upon completion of a central registry check or criminal records check, a licensee shall discharge from employment a director or employee [employee, or volunteer]:~~

~~(a) Whose name is listed on the central registry established by 922 KAR 1:470; or~~

~~(b) Who has been convicted of a crime defined by KRS 17.165(1) or [and] (3).~~

~~(4) A child care center may request that a volunteer submit to a voluntary:~~

~~(a) Child abuse or neglect central registry check as specified in 922 KAR 1:470; and~~

~~(b) Criminal records check. [(2)] [The Division of Licensed Child Care shall monitor a child care center that operates under a provisional license.]~~

~~(5) A volunteer who does not submit to a background check described in subsection (4) of this section shall:~~

~~(a) Be supervised by an employee for whom each background check required by KRS 199.896(19) has been completed; and~~

~~(b) Not be alone in the presence of a child. [(3)] [Upon completion of the six (6) month probationary period required in Section 4(2) of this administrative regulation, the Division of Licensed Child Care shall:~~

~~(a) Approve regular licensure for a child care facility operating under a provisional license;~~

~~(b) Extend the provisional license for a period of six (6) months upon completion of the probationary period; or~~

~~(c) If a condition designated in Section 5 of this administrative regulation exists, deny regular licensure.]~~

~~(6) [(4)] Effect of previous denial or revocation.~~

~~(a) If an applicant for licensure has had a prior certification, license, registration, or permit to operate denied or revoked, the Cabinet for Health Services shall grant the applicant a license if:~~

~~1. A two (2) year period has expired from the date of the prior denial or revocation; and~~

~~2. The applicant has: [An application to operate a child care center shall not be accepted by the Cabinet for Health Services if the proposed center has, within the previous two (2) years, had its certification, license, registration, or permit to operate denied or revoked.~~

~~(b) An application shall be accepted by the Cabinet for Health Services and a provisional license shall be granted after the expiration of the two (2) year period, provided the applicant has:]~~

~~a. [4.] The ability to comply with the provisions of this administrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896; and]~~

~~b. [2.] Completed, since the time of the prior denial or revocation, sixty (60) hours of training in developmentally appropriate child care practice, approved by the Cabinet for Health Services; and~~

~~c. [3.] Not had an application, certification, license, registration, or permit denied, revoked, or suspended for one (1) of the reasons set forth in KRS 199.896(19) or Section 5(2) [Section 5(1)(b) or (2)] of this administrative regulation.~~

~~(b) [(c)] If a [provisional] license is granted after the two (2) year period specified in paragraph (a) of this subsection, the licensee shall serve a two (2) year probationary period during which the child care center [facility] shall be inspected on at least a quarterly basis. [Upon completion of the two (2) year probationary period, a regular license shall be issued if the licensee is in compliance with subsection (8) [(6)] of this section.]~~

~~(7) [(5)] A [provisional or regular] license shall specify:~~

~~(a) A particular physical location;~~

~~(b) A designated sponsor or owner as operator;~~

~~(c) Age category of the children in care;~~

~~(d) The maximum number of children allowed under center [facility] supervision at one (1) time, including a child related to the licensee or an employee, based upon:~~

~~1. Available space as determined by the State Fire Marshal's Office in conjunction with the Cabinet for Health Services;~~

~~2. Adequacy of program;~~

~~3. Equipment; and~~

~~4. Staff;~~

~~(e) If provided, nighttime care;~~

~~(f) If provided, transportation; and~~

~~(g) A list of services to be provided by the child care center [facility].~~

~~(8) [(6)] To qualify for [a provisional] and [to] maintain a [regular] license, a child [day] care center [facility] shall:~~

~~(a) Provide written documentation from the zoning commission showing compliance with local zoning requirements;~~

~~(b) Be approved by the Office of the State Fire Marshal or designee;~~

~~(c) Have an approved water and sewage system in accordance with local, county, and state laws;~~

~~(d) Have adequate equipment, supplies, and staff to serve initial enrollment of children;~~

~~(e) Provide written proof of liability insurance coverage of at least \$100,000 per occurrence; and]~~

~~(f) Comply with provisions of this administrative regulation and 922 KAR 2:110 and 922 KAR 2:120; and~~

~~(g) Cooperate with the state agency during an investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030(3).~~

~~(9) [(7)] Corrective plans.~~

~~(a) The Cabinet for Health Services shall perform an on-site child care center [facility] inspection, described by [pursuant to] KRS 199.896(14), in order to ascertain compliance with subsection (7) [(6)] [(5)] of this section. A regulatory violation identified during an inspection shall be reported to the child care center [facility] in a written statement of deficiency in accordance with KRS 199.896(5).~~

~~(b) A child care center [facility] not in compliance shall submit, within ten (10) days of receipt of the statement of deficiency, a written plan for the elimination or correction of a violation. The plan shall detail:~~

~~1. Specific action undertaken to correct a violation;~~

~~2. The date action was or is anticipated to be completed; and~~

~~3. Action utilized to assure ongoing compliance.~~

~~(c) The Cabinet for Health Services shall review the plan and notify the child care center [facility], in writing, of the decision to:~~

~~1. Accept the plan;~~

~~2. Not accept the plan; or~~

~~3. Deny, suspend, or revoke the child care center's [facility's] license, in accordance with Section 5 [pursuant to Section 6] of this administrative regulation.~~

~~(d) A notice of unacceptability shall state the specific reasons the plan is unacceptable.~~

~~(e) A child care center [facility] notified of unacceptability of its plan shall:~~

~~1. [4.] Within ten (10) days of notification, [4.]~~

~~submit an amended plan; or~~

~~2. Have its license revoked or denied for failure to submit an acceptable amended plan in accordance with KRS 199.896(4).~~

~~(10) [(8)] A [provisional] license shall be issued and [a regular license shall be] renewed if the center [facility] has met the requirements contained in this administrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896(3), (13), (15), (16), (18), and (19).~~

~~(11) [(9)] A [provisional or regular] license shall not be sold or transferred.~~

~~(12) [(10)] Changes to the center [facility].~~

~~(a) A licensee shall notify the Cabinet for Health Services, in writing, if there is a change to the child care center [facility] as listed in 922 KAR 2:110, Section 4(4) [(b) through (e)] and (5).~~

(b) The notification shall be signed by each owner listed on the license application.

(c) A fee shall not be charged.

(d) Notification shall be submitted to the Division of Licensed Child Care, 275 East Main Street, Frankfort, Kentucky 40621.

(13) ~~(44)~~ The license shall be posted in a conspicuous place in the child care center ~~facility~~.

(14) ~~(42)~~ A child care center ~~facility~~ shall not begin operation without a license to operate from the Cabinet for Health Services.

(15) ~~(43)~~ A child care center ~~facility~~ operating without a license shall be subject to legal action.

Section 3. Fees. (1) **An initial licensing fee of fifty (50) dollars** ~~[licensing fees]~~ shall be charged according ~~[pursuant]~~ to KRS 199.896(3).

(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the licensure application.

(3) A fee shall not be refunded if an inspection has been made by the Cabinet for Health Services or the State Fire Marshall's Office.

Section 4. Annual Renewal. A licensee seeking renewal shall submit, one (1) month prior to license expiration, an Application for Renewal of a License to Operate a Day Care Center, Form OAG-204A.

Section 5. Basis for Denial, Suspension or Revocation. (1) **The Cabinet for Health Services shall deny, suspend, or revoke a license in accordance with KRS 199.896(4) and (19) if the applicant for licensure, director, employee, or a person who has supervisory authority over a child fails to meet the requirements of this administrative regulation or those of 922 KAR 2:110 or 922 KAR 2:120.** ~~[The Cabinet for Health Services shall deny an application or suspend or revoke a provisional or regular license if the applicant for licensure, director, employee, or a person who has supervisory authority over a child;~~

~~(a) Fails to meet the requirements of this administrative regulation or those of 922 KAR 2:110 or 922 KAR 2:120; or~~

~~(b) Fails to meet the requirement of KRS 199.896(19).]~~

(2) For the purposes of KRS 199.896(19), an applicant who has been found by the cabinet to have abused or neglected a child shall mean an individual who is listed on the central registry described in 922 KAR 1:470.

(3) A child abuse or neglect central registry check required by KRS 199.896(19) shall be conducted:

(a) One (1) time; and

(b) At the time an individual;

~~4.] Applies for:~~

1. ~~[a.]~~ Initial licensure on or after July 14, 2000; or

2. ~~[b.]~~ Employment in a child care center ~~facility~~ on or after July 14, 2000 ~~[or~~

~~2. Volunteers in a child care facility on or after July 14, 2000].~~

(4) **Each volunteer who submits to a background check and each child care center employee, including a director, shall report to the licensee if, subsequent to each background check required by KRS 199.896(19), the volunteer or employee is:** ~~[Each child care facility employee or volunteer shall report to the licensee or facility's director an incident that occurs subsequent to the one (1) time only background checks required by KRS 199.896(19) if the employee or volunteer:]~~

~~(a) [Has been] Convicted of a violent crime or sex crime defined by KRS 17.165(1) and (3);~~

~~(b) [Is] The subject of a cabinet child abuse or neglect investigation; or~~

~~(c) [Has been] Found by the cabinet or a court to have abused or neglected a child.~~

(5) **Each licensee shall report to the Cabinet for Health Services** ~~[an incident that occurs subsequent to the one (1) time only, statutorily required background checks]~~ if the licensee, an employee, or volunteer who submitted to a background check meets a criterion ~~[meet the criteria]~~ of subsection (4)(a) through (c) of this section.

~~(6) [The following shall constitute a finding of abuse or neglect by the Cabinet for Families and Children, for purposes of KRS~~

~~199.896(19):~~

~~(a) The individual applying for employment or the applicant for licensure has had an incident of abuse or neglect of a child substantiated by the cabinet and has been provided or is provided by the cabinet with an opportunity to appeal the substantiation to an administrative or judicial body; and~~

~~1. The individual waived the right to appeal the substantiation; or~~

~~2. The substantiated incident was upheld by an administrative or judicial body; or~~

~~(b) The individual is listed on the Nurse's Aid Abuse Registry by the Inspector General's Office.~~

~~(3) Emergency action shall be taken in accordance with [pursuant to] KRS 199.896(4).~~

~~(7) [(4)] Public information shall be provided in accordance with [pursuant to] KRS 199.896(10) and (11) and [KRS] 199.898(2)(d) and (e).~~

Section 6. Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension or revocation, the Cabinet for Health Services shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with ~~[pursuant to]~~ KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing a written request for a hearing. The request shall:

(a) Be submitted to the Secretary of the Cabinet for Health Services within **twenty (20)** ~~[fifteen (15)]~~ days of receipt of the notice of adverse action; and

(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files a written request for a hearing, the Cabinet for Health Services shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the Cabinet for Health Services shall:

(a) Abate the formal hearing pending completion of the informal dispute resolution process; and

(b) Proceed to informal dispute resolution.

Section 7. Informal Dispute Resolution. (1) A request for informal dispute resolution shall:

(a) Accompany the request for a hearing;

(b) Identify the licensure deficiency in dispute;

(c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency;

(d) Include documentation that disputes the deficiency; and

(e) Specify whether the applicant for licensure or licensee requests a meeting with Cabinet for Health Services staff.

(2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:

(a) Review documentation submitted by the applicant for licensure or licensee; and

(b) If requested, schedule a first-level informal dispute resolution meeting with the applicant for licensure or licensee.

(3) The first-level informal dispute resolution meeting shall be held within ten (10) days of receipt of the request by the Cabinet for Health Services, unless both parties agree in writing to an extension of time.

(4) The first-level informal dispute resolution meeting shall be conducted by:

(a) The regional program manager, or designee; and

(b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.

(5) Within five (5) days of completion of the first-level informal dispute resolution meeting, the regional program manager or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(6) If a first-level informal review is requested in lieu of a dispute

resolution meeting, the regional program manager or designee shall comply with the provisions of subsection (5)(a) through (c) of this section within ten (10) days of receipt of the request for first-level informal dispute resolution.

(7) An applicant or a licensee may appeal a decision issued by the regional program manager by:

(a) Proceeding with a hearing according ~~pursuant~~ to KRS 13B.050; or

(b) Filing a written request for a second-level informal dispute resolution to the Director of the Division of Licensed Child Care within ten (10) days of receipt of the regional program manager's decision. The request shall specify whether the applicant for licensure or licensee requests a meeting with Cabinet for Health Services staff.

(8) Upon receipt of the written request for second-level informal dispute resolution, the Director of the Division of Licensed Child Care or designee shall:

(a) Review the decision issued from the first-level informal dispute resolution;

(b) Review the documentation described in subsection (1)(d) of this section; and

(c) If requested, schedule a second-level informal dispute resolution meeting with the applicant for licensure or licensee.

(9) The second-level informal dispute resolution meeting shall be held within ten (10) days of receipt of the request by the Cabinet for Health Services, unless both parties agree in writing to an extension of time.

(10) Within five (5) days of completion of the second-level informal dispute resolution meeting, the Director of the Division of Licensed Child Care or designee shall:

(a) Issue a decision by written notification to the return address specified in the request for second-level informal dispute resolution;

(b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and

(c) Specify whether the adverse action has been rescinded.

(11) If a second-level informal review is requested in lieu of a dispute resolution meeting, the Director of the Division of Licensed Child Care or designee shall comply with the provisions of subsection (10)(a) through (c) of this section within ten (10) days of receipt of the request for second-level informal dispute resolution.

(12) If an applicant for licensure or licensee is satisfied with the decision issued during informal dispute resolution, the request for a hearing shall be withdrawn.

(13) If an applicant for licensure or licensee is not satisfied with the decision issued from the second-level informal dispute resolution, the hearing previously held in abeyance shall be conducted in accordance with KRS Chapter 13B.

(14) A request for informal dispute resolution shall not:

(a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or

(b) Delay submission of a written plan of correction.

(15) Emergency action taken in accordance with ~~pursuant to~~ Section 5(6) ~~[(4)]~~ of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the Cabinet for Health Services' ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "OIG-204, ["]Application for a License to Operate a Day Care Center, edition November 2000"; and

(b) "OIG-204A, ["]Application for Renewal of a License to Operate a Day Care Center, edition November 2000".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Inspector General's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

HIREN DESAI, Attorney

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: February 7, 2002



ADMINISTRATIVE REGULATIONS AMENDED AFTER HEARING  
OR RECEIPT OF WRITTEN COMMENTS

CABINET FOR HEALTH SERVICES  
Department for Public Health  
Division of Public Health Protection and Safety  
(Amended After Hearing)

902 KAR 10:085. Kentucky on-site sewage disposal systems.

RELATES TO: KRS 211.350 to 211.380, 211.990(2)

STATUTORY AUTHORITY: KRS 194.050, 211.090(3), 211.180(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.350 to 211.380 and 211.990(2) direct the cabinet to regulate the construction, installation, or alteration of any on-site sewage disposal system, except for systems with a surface discharge pursuant to KRS 224.10-100(19)(9). This administrative regulation establishes uniform standards for on-site sewage disposal systems. The function of this administrative regulation is to assure the construction, installation, or alteration of on-site sewage disposal systems in such a manner as to protect public health and the environment.

Section 1. ~~[Citation of Administrative Regulation. This administrative regulation may be cited as the "Kentucky On-site Sewage Disposal Systems Administrative Regulation."]~~

Section 2. Definitions. As used in this administrative regulation the following terms shall have the meanings set forth below:

(1) "Alter" means to make a physical change in the original design, sizing, layout, components, location, or method of operation (individually or in any combination of changes) of an existing on-site sewage disposal system, as a result of necessary repair or a change in wasteload volume or wasteload characteristics.

(2) "Approved" means ~~[that which has been considered]~~ acceptable to the cabinet for the proposed use.

(3) ~~[(2)]~~ "Areas subject to ~~[frequent]~~ flooding" damage means:

(a) Areas subject to surface ponding of rainfall runoff ~~[those areas inundated at a]~~ one (1) or more times each year ~~[or less frequency]~~, for a period of time exceeding seven (7) consecutive days; or

(b) Areas in floodplains or drainageways with visible evidence of stream scouring, pot-holing, gully or ravine formation; or

(c) Areas within karst depressions subject to backwater flooding from subsurface conduits.

(4) ~~[(3)]~~ "Artificial drainage systems" means ~~[a]~~ manmade systems ~~[system]~~ of surface ditching or berming to divert surface water run-off; or curtain or vertical drains for interception and diversion of lateral groundwater flow; or underdrains for lowering the level of high water tables.

(5) ~~[(4)]~~ "Blackwater" means wastewater containing liquid and solid ~~[human body]~~ waste ~~[and the carriage waters]~~ generated through urinal, water closet, garbage disposal, and similar sanitary fixtures used in residential, commercial, institutional or recreational facilities ~~[toilet usage. It also includes wastes resulting from a garbage disposal]~~.

(6) ~~[(5)]~~ "Cabinet" means the Cabinet for Health Services ~~[Human Resources]~~ and ~~[includes]~~ its authorized agents.

(7) ~~[(6)]~~ "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.360.

(8) ~~[(7)]~~ "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357.

(9) ~~[(8)]~~ "Clay" means a mineral soil separate consisting of particles less than 0.002 mm in equivalent diameter.

(10) "Cluster system" means a system designed to accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil treatment and dispersal system(s) of conventional, modified or alternative design.

(11) ~~[(9)]~~ "Effluent" means the liquid discharge of a septic tank or other sewage pretreatment unit.

(12) ~~[(10)]~~ "Gravelless pipe" means large diameter perforated piping encased in a synthetic filter material, designed for use in lateral field trenches without ~~[the use of]~~ trench rock or gravel fill material. ~~[Such pipe includes a mandatory overwrap or encasing of synthetic filter material meeting specific criteria.]~~

(13) ~~[(11)]~~ "Grease" means fats or oils of animal, vegetable, or mineral origin, separately or in colloidal or dissolved states in combination with soaps, detergents, and ~~[or]~~ food particles.

(14) ~~[(12)]~~ "Grease trap" means a component or device ~~[an on-site sewage disposal system component]~~ designed to separate grease ~~[and its constituents]~~ from the wastewater stream, and store or treat the ~~[provide for storage of]~~ separated grease, ~~[and discharge the remaining wastewater for treatment]~~.

(15) ~~[(13)]~~ "Greywater" means wastewater generated by hygiene activities in residential, commercial, institutional, or recreational facilities, excluding blackwater ~~[water-using fixtures and appliances, excluding the toilet and the garbage disposal]~~.

(16) "Karst" means a type of topography formed over limestone or dolomite (or other soluble rock) by dissolving or solution, and that is characterized by sinkholes, caves, and underground drainage. Groundwater flow in karst occurs principally in conduits and is turbulent.

(17) ~~[(14)]~~ "Landscape position" means the location of an area on a site being evaluated for the proposed installation of an on-site sewage disposal system, ~~[installation area on a site]~~ relative to the surrounding topographic relief of the land surface. Different landscape positions are defined as follows:

(a) Hill or ridge top: the relatively level area occupying the summit of a hill or ridge.

(b) Shoulder slope: the transitional area immediately adjacent to the hill or ridge top where the slope begins to increase ~~[steepen and fall]~~ downward.

(c) Side slope: the slightly to steeply sloping portion of a hillside lying between the shoulder and foot slopes.

(d) Foot slope: the slightly to steeply sloping portion of a hillside near the base or lowest point of elevation.

(e) Toe slope: the lowest point of elevation at the base of a hillside; generally concave in cross-sectional profile.

(f) Terrace, natural: a naturally occurring elevated shelf of level to slightly sloping character adjacent to current or former streams and drainageways.

(g) Terrace, artificial: a manmade elevated shelf or bench created by excavating into a slope, or placing fill, along the contour. ~~[Plain: level to slightly sloping or undulating areas in wide valleys.]~~

(h) Flood plain: level to slightly sloping areas adjacent to streams or other bodies of water subject to flooding for extended periods, or other flood-prone areas such as sinkholes or other surface depressions.

(i) Depressions: sinkholes or other areas with a concave or cupped cross-sectional profile and lacking surface drainage outlets.

(j) Drainageway: an ~~[a naturally occurring depression]~~ area in the landscape with slight to steeply sloping sides which causes accumulation of surface and groundwater and channels it to surface or subsurface drainage outlets.

(k) Convex slope: a sloping area with a humped or upwardly bowed cross-sectional profile which promotes dispersal of surface and groundwater.

(l) Concave slope: a sloping area with a cupped or downwardly bowed cross-sectional profile which causes accumulation of surface and groundwater.

(18) ~~[(15)]~~ "Lateral field" means that portion of an on-site sewage treatment and dispersal system which consists of subsurface trenches or beds containing materials, components, or devices for maintaining exposed soil surfaces and a means to distribute effluent to those surfaces ~~[the area in which the subsurface soil absorption system is installed and is a general term for the system itself]~~.

(19) ~~[(16)]~~ "Low pressure pipe system" means an on-site sew-

age disposal system consisting of a sewage pretreatment unit, a dosing tank with pump(s) or siphon(s), a pressurized supply line, manifold, ~~and~~ lateral field ~~lines~~, and necessary control devices and appurtenances.

(20) ~~[(47)]~~ "Leaching chamber" means a specially designed component for use in lateral fields ~~(field trenches or beds, with or without the use of trench rock or gravel fill material, which forms an open bottomed chamber or conduit [cavern] over the [subsurface] soil absorption surface, and which interlocks with other such chambers to obtain the necessary absorption surface area).~~

(21) ~~[(48)]~~ "Mottling" means spots or blotches of different colors or hues ~~[color or shades of color]~~ interspersed with the dominant color of a soil, which are created by three (3) basic processes:

(a) Groundwater saturation of the soil for varying periods of time, causing reducing conditions to occur which chemically bleach or fade soil colorants, evidenced by soft concretions or low chroma (2 or less by Munsell notation) soil color;

(b) Parent material weathering, evidenced by relic fragments of more durable parent material encapsulated within a mottle of weathering mineral material;

(c) Mechanical disturbance of soils by cutting, filling, compaction, landslide or other means, evidenced in commingling of soil types and destruction of original internal drainage pathways. ~~[soil]~~

(22) ~~[(49)]~~ "On-site sewage disposal system" means a ~~[complete]~~ system installed on a parcel of land, under the control or ownership of any person, which accepts sewage for treatment and ultimate disposal under the surface of the ground. The common terms "on-site sewage system" or "on-site system" also have the same meaning. This definition includes, but is not limited to, the following:

(a) A conventional system consisting of a sewage pretreatment unit(s), distribution devices ~~[box(es)]~~, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallow ~~[shallower]~~ trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit(s), necessary site modifications, wasteload modifications, and a subsurface soil treatment and dispersal ~~[absorption]~~ system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) Cluster systems ~~[which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design]; and~~

(e) A holding tank which provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal ~~[absorption]~~ system, or connection to a municipal sewer.

(23) ~~[(20)]~~ "Parent material" means weathering fragments of bedrock underlying a soil, colluvial or alluvial deposits, ~~[or]~~ loess deposits, or glacial tills from which the soil is being formed.

(24) ~~[(24)]~~ "Perched water table" means a saturated zone as identified by free water, or soft concretions, or soil color of chroma 2 or less, overlying an impermeable ~~[soil mottling, caused by a restrictive]~~ horizon and is generally above the permanent ~~[natural]~~ water table.

(25) ~~[(22)]~~ "Percolation test" means a physical test conducted according to prescribed methods on a parcel of land. Such test measures the ability of the soil to accept a volume of water over a measured time period, under falling hydraulic head conditions. Results are given as a consistent acceptance rate or equilibrium rate in inches per hour.

(23) "Permanent water table" means the zone of soil and parent material saturation by groundwater which remains relatively constant unless acted upon by artificial means of drainage or severe weather conditions. This ~~[Such]~~ zone is evidenced by free water or soil colors of black (due to high organic content), grays, blues, or olive greens.

(26) "Permeability test" means a scientific procedure using lysimeters and other instrumentation to determine the saturated hydraulic conductivity of site specific soil horizons.

(27) ~~[(24)]~~ "Person" means any individual, firm, association,

organization, partnership, business trust, corporation, company or governmental unit.

(28) "Plastic limit" means the moisture content at which a soil changes from a semisolid to plastic.

(29) "Professional engineer" means an engineer according to KRS Chapter 322.

(30) "Puddling" means the creation of a thin restrictive horizon atop and within an exposed soil surface by deposition of waterborne silt or clay-sized soil particles.

(31) ~~[(25)]~~ "Repair area" means an area, either in its natural state or which is capable of being modified, consistent with this administrative regulation, which is reserved for the installation of an additional lateral field(s) ~~[fields(e)]~~ and is not covered with permanent structures or impervious materials.

(32) "Residential septic tank effluent" means the liquid discharge having the constituency and strength typical of that which discharges from a domestic household septic tank pretreatment unit. Effluent from a residential septic tank is generally considered to have waste strength values equal to or less than the following: a monthly average of twenty (20) mg/l of fats, oils, and grease (FOG), and a monthly average of 250 mg/l of five (5) day biochemical oxygen demand (BOD-5), and a monthly average of 155 mg/l of total suspended solids (TSS). The monthly average shall be calculated as the sum of all measurements taken over thirty (30) consecutive days, with at least six (6) measurements occurring on six (6) separate days, and divided by the number of measurements taken during that period.

(33) ~~[(26)]~~ "Restrictive horizon" means a soil horizon~~[s]~~ which is relatively impervious to the movement of groundwater or effluent, and includes:

(a) Mineralogically-cemented soil aggregates including but not limited to fragipans or iron pans; or

(b) Naturally-formed structureless soils (massive structural grade); or

(c) Naturally-formed horizontally structured soil (platy structure);

or

(d) Claypan which is a compact, slowly permeable layer in the subsoil having a much higher clay content than the overlying material, from which it is separated by a sharply-defined boundary. Clay pans are usually hard when dry, and plastic and sticky when wet; or

(e) Structurally-destroyed soils where mechanical compression forces the plastic limit of the soil to be exceeded (traffic pans, plow pans, compacted fill). ~~[due to its cemented, compacted or structural condition, is relatively impervious to the downward movement of water or treated effluent and includes: fragipans; hard pans; iron pans; plow pans and platy or massive structural grades.]~~

(34) ~~[(27)]~~ "Rock" means the consolidated or partially consolidated mineral matter or aggregate, including weathered rock ~~[or saprolite]~~, not exhibiting soil properties, and exposed at the surface or overlain by soil.

(35) ~~[(28)]~~ "Sand" means a mineral soil separate consisting of particles between two (2) mm and 0.05 mm in diameter.

(36) ~~[(29)]~~ "Seasonal high water table" means the upper level of a zone of soil and parent material saturation over restrictive horizons or the permanent water table, which may vary with weather conditions ~~[caused by groundwater fluctuation in the soil]~~.

(37) "Soil compaction" means permanent damage to, or destruction of, natural soil structural features by mechanical compression or puddling, which restricts or prevents natural air and water movement through the soil.

(38) "System replacement area" means a parcel of land, under the control of an on-site system owner, reserved for system alteration, expansion, or replacement.

(39) ~~[(30)]~~ "Secretary" means the secretary for the Cabinet for Health Services ~~[Human Resources]~~.

(40) ~~[(34)]~~ "Sewage" means the blackwater and greywater wastes generated in residential, commercial, institutional or recreational ~~[or public structures or]~~ facilities.

(41) ~~[(32)]~~ "Sewage pretreatment unit" means a watertight sewage treatment structure designed and constructed to receive raw sewage, separate solids from liquids, digest organic matter through a period of retention, and allow ~~[clarified]~~ effluent to discharge to a subsurface soil treatment and dispersal ~~[absorption]~~ system. Such pretreatment units fall into three (3) basic categories:

(a) Septic tanks - which rely predominantly on anaerobic bacterial action for treatment;

(b) Aerobic units - which introduce atmospheric air into the sewage by mechanical methods to promote treatment by aerobic bacteria; and

(c) Combination units - which provide treatment through both anaerobic and aerobic bacterial action and/or mechanical filtering, ozonation or ultraviolet irradiation, or other approved treatment processes.

(42) [(33)] "Silt" means a mineral soil separate consisting of particles between 0.05 mm and 0.002 mm in diameter.

(43) "Sinkhole" means any naturally-occurring depression in soil or bedrock formed in a karst area by the removal of earth material from below the land surface, which is circumscribed by a closed topographic contour and lacks a surface drainage outlet.

(44) "Sinkhole sideslope midpoint" means the line of equal elevation along the midpoint between the footslope and the shoulder slope.

(45) "Sinkhole throat" means an outlet or outlets for a sinkhole allowing runoff from the drainage basin of the sinkhole to flow directly into the ground.

(46) [(34)] "Site" means an [the] area or parcel of land, under the control of any person, on which [structures or other facilities generating sewage and the] on-site sewage disposal system(s) serving any [such] structures or facilities are to be located.

(47) [(35)] "Slope" means the deviation of the surface of the land from true horizontal, measured as the rise or fall in feet or fractions thereof in a line from a fixed point to another point 100 feet distant. This rise or fall is normally expressed as a percentage of slope.

(48) [(36)] "Soil" means the naturally occurring unconsolidated mineral and organic material of the land surface. It consists of sand, silt and clay minerals, [and] variable amounts of organic materials, and areas between mineral and organic matter particles (voids).

(49) "Soil absorption" means the movement of effluent into and through interconnected voids within the soil.

(50) [(37)] "Soil horizon" means a layer of soil, [or] soil material, rock fragments and other unconsolidated material approximately parallel to the land surface and differing from adjacent genetically related layers in physical, chemical, and biological properties or characteristics such as color, structure, texture, consistence, pH.

(51) [(38)] "Soil map" means a map showing the distribution of soil series [types] or other soil mapping units in relation to the prominent physical and cultural features of the earth's surface.

(52) [(39)] "Soil morphology" means the physical constitution, particularly the structural properties, of a soil profile as exhibited by the kinds, thickness, and the arrangement of the horizons in the profile, and by the texture, structure, uniformity, and internal soil drainage [consistence, and porosity] of each horizon.

(53) [(40)] "Soil series" means a basic unit of soil classification, and consisting of soils which are essentially alike in all major profile characteristics.

(54) [(41)] "Soil structure" means the combination or arrangement of individual soil particles into definable aggregates, or peds, which are characterized and classified on the basis of size, shape, and degree of distinctness.

(55) [(42)] "Soil survey" means the systematic examination, description, classification, and mapping of soils in an area.

(56) "Soil tests" means soil tests as listed in KRS 211.350, as amended, and shall include all tests and evaluations of soil morphology and land features required to complete a site evaluation for a proposed site.

(57) [(43)] "Soil texture" means the relative proportions of sand, silt, and clay in a soil, and may include particles greater than two (2) mm in diameter, such as gravel, cobblestones, flagstones, and chert[~~etc.~~].

(58) [(44)] "Subdivision" means the separation of a parcel or tract of land into two (2) [three (3)] or more parcels or tracts for the purpose of development into residential, commercial, or public building sites.

(59) [(45)] "Subsoil" means, in general concept, that part of the soil below the A horizon.

(60) [(46)] "Subsurface soil treatment and dispersal [absorption] system" means that portion of an on-site sewage disposal system which accepts effluent from a sewage pretreatment unit(s) for further

treatment by microbial, plant and animal life within the soil, as well as treatment by filtration, chemical decomposition and bonding within the soil itself, and consists of:

(a) Devices, components, and piping to transport effluent under pressure or by gravity flow, and distribute the effluent to the soil absorption surfaces;

(b) Trenches, beds, chambers, mounds, lagoons, [artificial marshes,] separately or in combination, which form or enclose the soil absorption surfaces;

(c) Rock, gravel, or other fill materials required within the system, including barrier materials, and fill soil within or over the system[~~and~~

(d) Artificial drainage systems, and other necessary site or soil modifications.

(47) "System repair" means minor replacement or reconstruction of a component of an on-site sewage disposal system.

(61) [(48)] "Textural class" means soils grouped on the basis of a specified range in texture.

(62) [(49)] "Topsoil" means:

(a) [The layer of soil moved in cultivation; and

(b) The A or Ap horizon, as defined in the Soil Survey Manual, 1993, Soil Survey Division Staff, USDA Handbook No. 18, [described in published U.S. Conservation Service soil surveys.]

(63) [(50)] "Variance" means a waiver of certain specified requirements of this administrative regulation granted by the cabinet [after consideration of documented evidence that the granting of the waiver cannot reasonably be expected to result in the system contaminating groundwater supplies or creating a health hazard through surfacing of effluent, or otherwise creating a public health nuisance].

Section 2. [(3)] Site Approval Procedures. (1) Individual site approval procedures.

(a) All persons seeking approval of an individual site for the installation of an on-site sewage disposal system or alteration of an existing lateral field shall submit [to the local health department] an application for a site evaluation on forms provided by the cabinet, pay the required fee [as established by the local board of health], and submit a basic site plan drawing showing the following information:

1. Specific address and/or location of the site.
2. Site boundary lines and dimensions of same.
3. Location of existing structures, sewage disposal systems, wells, ponds, streams, easements, roads, drives, if present.
4. Proposed (or existing) location of structure to be served by the system, and proposed system location.

(b) Person(s) seeking approval shall establish [with the local health department] an appointment time and date for the site evaluation, if they desire to be present during the evaluation for consultation.

(c) Property boundaries shall be clearly identified.

(d) If the site evaluation reveals that the applicable requirements of this administrative regulation are met, the area designated for system installation shall be clearly marked [flagged off] by the certified inspector or professional engineer by using flags or other [using] suitable, readily observable markers and the location of the designated area shall be recorded on a property drawing by showing distances to existing set points. The person seeking approval shall receive a copy of the Site Evaluation Form including the overall evaluation rating, drawing showing the location of the designated lateral field area, and requirements [along with instruction] relative to site limitations [where found] requiring site or system modifications [or alternative systems]. Instructions shall also be included to be presented to the Certified Percolation Tester selected by the person to conduct the percolation test (when required). Such instructions shall include the depth at which the test is to be conducted in the designated area, as well as any additional instructions deemed necessary by the Certified Inspector.

(e) [(d)] After the site evaluation [(and percolation test, when required)] has been conducted [and found acceptable by the cabinet], a permit to construct, [or] install, or alter an on-site sewage disposal system shall be obtained prior to construction of any portion of that system. An application for a construction permit shall be submitted and accompanied by a detailed drawing of the proposed system or alteration, including all necessary specifications, and re-

quired permit fees. Such permits shall be issued only by a certified inspector and only to a certified installer or homeowner as provided in 902 KAR 10:110, and shall expire one (1) year from date of issuance unless an extension is granted by the cabinet.

(2) ~~Subdivision approval procedures tentative.~~

(a) ~~All persons seeking tentative approval for new subdivisions developed after the effective date of this administrative regulation shall submit to the local health department the following information:~~

1. ~~Specific location of the site including a detailed site location map;~~

2. ~~A preliminary land plan of the property to be developed, showing proposed lots and dimensions of same, topography with ten (10) foot contour intervals, and all proposed or existing wells, ponds, streams, easements, roads, streets, or existing structures; on a minimum 1:100 scale;~~

3. ~~A detailed overlay for the plan delineating areas of soils with differing characteristics as found on the property, along with descriptive information of those characteristics as per Section 4(4) through (7) of this administrative regulation, prepared by an approved consultant;~~

4. ~~A statement, supported by official agency documentation, that municipal sewer system service is unavailable or economically infeasible to provide; and~~

5. ~~Any other relevant information deemed necessary for site evaluation.~~

(b) ~~After review of the above information, and any site visits or evaluation deemed necessary, the local health department may issue a tentative approval of the proposed subdivision for on-site sewage disposal system usage. Such approval shall be granted only insofar as to the general feasibility of on-site sewage disposal system usage for the subdivision as a whole, or for specific tracts or areas within the subdivision, and shall not be construed as an approval of any specific lot or site for system installation.~~

(c) ~~Except where required by local health department regulation, securing tentative approval shall not be construed as a prerequisite to final approval, in that any person seeking approval for a subdivision may elect to initially apply for official site evaluations as outlined in subsection (1)(a) and (b) of this section on a lot-by-lot basis. Local health departments may adopt more specific requirements for subdivision approval, within their respective jurisdictions, which are not in conflict with these administrative regulations.~~

(3) ~~Subdivision approval procedures final.~~

(a) All persons seeking ~~final~~ approval for subdivisions developed after the effective date of this administrative regulation, and for all existing subdivisions of record shall follow the procedures for approval outlined in subsection (1)(a) and (b) of this section, in that each individual lot or site shall be evaluated individually [shall stand on its own merit] [as to approval or disapproval or type, size or design of the system to be installed].

(b) When ~~Whenever either tentative or final~~ site evaluations reveal ~~evaluation reveals~~ that individual ~~lot or site~~ on-site sewage disposal systems are ~~infeasible or~~ unapprovable due to site ~~and/or soil~~ characteristics, the applicant ~~the person(s) seeking approval~~ shall be advised as to other alternatives if available ~~directed to submit a proposal for a cluster system (or systems) where feasible, or pursue other alternatives under the authority of the Division of Water, Natural Resources and Environmental Protection Cabinet~~.

(c) When cluster system(s) are proposed, legal documents relative to ownership, operation and maintenance of such systems in perpetuity shall also be submitted.

(d) Local health departments may adopt more specific requirements for subdivision approval, within their respective jurisdictions, which are not in conflict with these administrative regulations.

Section 3. ~~4.~~ Site Evaluation Standards. (1) A certified inspector or professional engineer shall evaluate each proposed site. Based upon the factors contained in subsections (2) through (8) of this section, an official site evaluation form shall be completed classifying each factor as SUITABLE (S), PROVISIONALLY SUITABLE (PS), or UNSUITABLE (U).

(2) Topography.

(a) Uniform slopes ~~under~~ fifteen (15) percent or less shall be considered SUITABLE with respect to topography.

(b) Uniform slopes between fifteen (15) percent and up to and

including thirty (30) percent shall be considered PROVISIONALLY SUITABLE with respect to topography. Slopes within this range may require installation of curtain drains, ~~or~~ vertical drains, or other approved drainage methods upslope from the lateral field. Usable areas larger than normally required may be needed in this slope range.

(c) Slopes greater than thirty (30) percent shall be considered UNSUITABLE except ~~when a thorough study of the soil characteristics indicates that a subsurface soil absorption system will function satisfactorily and sufficient ground area is available to properly install such a system~~ slopes greater than thirty (30) percent may be classified as PROVISIONALLY SUITABLE when:

1. ~~The slope can be terraced or otherwise graded and the lateral field located in naturally occurring soil a minimum ten (10) foot horizontal distance from the top edge of the fill embankment; or~~

2. ~~The soil characteristics can be classified as SUITABLE or PROVISIONALLY SUITABLE to a depth of at least thirty (30) inches;~~

2. ~~3.~~ Surface water run-off is diverted around the lateral field;

3. ~~4.~~ If necessary, groundwater or perched water table flow is intercepted and diverted through curtain drains, ~~or~~ vertical drains, or other approved drainage methods; and

4. ~~5.~~ There is sufficient ground area available to install the on-site sewage disposal system with these modifications.

(d) Complex slope patterns and slopes dissected by gullies and ravines shall be considered UNSUITABLE with respect to topography.

(3) Landscape position.

(a) Convex hill or ridge tops, shoulder slopes, and side slopes, and level plains shall be considered SUITABLE with respect to landscape position.

(b) Convex foot slopes and natural terraces shall be considered PROVISIONALLY SUITABLE with respect to landscape position.

(c) Concave hill or ridge tops, shoulder slopes, side slopes, foot slopes, toe slopes, ~~natural~~ drainageways, depressions, and terraces may be considered PROVISIONALLY SUITABLE when:

1. The soil characteristics can be classified as SUITABLE or PROVISIONALLY SUITABLE ~~to a depth of at least thirty (30) inches;~~

2. Surface water run-off is diverted around the lateral field; and

3. Groundwater flow is intercepted and diverted through curtain or vertical drains.

(d) If the provisions above listed in paragraph (c) of this subsection cannot be met the landscape position shall be classified UNSUITABLE.

(e) Areas closer than seventy (70) ~~fifty (50)~~ feet to an open sinkhole throat or downslope from the sinkhole sideslope midpoint or ~~the rim of a sinkhole, or~~ areas subject to ~~frequent~~ flooding damage shall be considered UNSUITABLE with respect to landscape position.

(4) Soil characteristics (morphology). Backhoe pits may be required for site evaluation. Otherwise a minimum of four (4) soil borings shall be taken in the area to be used for lateral fields. Backhoe pits or ~~subsurface soil absorption systems. At least four (4) such~~ borings shall be excavated ~~taken~~ to a depth of forty-two (42) inches or as required to determine the soil characteristics. All excavated test holes or pits shall be backfilled to grade upon completion of the soil evaluation. ~~Backhoe pits may be required when a more direct observation of soil horizons is deemed necessary for proper evaluation. Backhoe pits shall be required on all individual sites where the presence of stony or rocky soils precludes auger use, and on all sites which have been strip mined, filled or otherwise disrupted.~~ Soil boring cores or exposed soil horizons in backhoe pits shall be evaluated and a determination made as to the suitability of the soil to treat and disperse ~~absorb~~ effluent. Evaluation of ~~The important~~ soil characteristics ~~which~~ shall be performed according to procedures outlined by the Soil Survey Manual, 1993, Soil Survey Division Staff, USDA Handbook No. 18 ~~evaluated by the certified inspector are~~ as follows:

(a) Texture. The texture of the different horizons of soils may be classified into four (4) general groups.

1. SOIL GROUP I - sandy texture soils contain more than seventy (70) percent sand-sized particles in the soil mass. These soils generally do not have enough clay to be cohesive. ~~Sandy soils have~~

~~favorable sewage application rates, but may have a low filtering capacity leading to malfunction due to contamination of groundwater.]~~ The sandy group includes the sand and loamy sand soil textural classes and shall generally be considered SUITABLE with respect to texture.

2. SOIL GROUP II - coarse loamy texture soils containing no ~~[contain]~~ more than twenty-seven (27) ~~[thirty (30)]~~ percent clay-sized particles in the soil mass. They exhibit slight or no stickiness. The coarse loamy group includes sandy loam and loam soil textural classes and shall generally be considered SUITABLE with respect to texture.

3. SOIL GROUP III - fine loamy texture soils containing ~~[contain]~~ less than forty (40) percent clay-sized particles ~~[and not more than thirty (30) percent sand-sized particles]~~ in a soil mass. They exhibit slight to moderate stickiness. The fine loamy group includes sandy clay loam, silt, silt loam, clay loam, and silty clay loam textural classes and shall generally be considered PROVISIONALLY SUITABLE with respect to texture.

4. SOIL GROUP IV - clayey texture soils contain forty (40) percent or more clay-sized particles and include sandy clay, silty clay, and clay.

a. Soil materials with 1:1(kaolinitic) or mixed mineralogy clays shall generally be considered provisionally suitable as to texture.

b. Soil materials with 2:1 clays and montmorillonitic mineralogy shall generally be considered unsuitable as to texture.

c. Soil mineralogy information may be obtained from proper soil classification/correlation of the site or by laboratory tests listed in the Soil Survey Laboratory Methods Manual, 1996, National Soil Survey Center, NRCS-USDA, Soil Survey Investigations Report No. 42. ~~[There are two (2) major types of clays: the 1:1 clays shall generally be considered PROVISIONALLY SUITABLE as to texture, and the 2:1 and mixed mineralogy clays, which shall be considered UNSUITABLE as to texture.]~~

5. The soil texture shall be estimated by field testing. Laboratory estimation of texture by particle-size analysis may be substituted for field testing when conducted in accordance with approved standard procedures such as those listed in the Soil Survey Laboratory Methods Manual, 1996, National Soil Survey Center, NRCS-USDA, Soil Survey Investigations Report No. 42, ~~[ASTM (American Society for Testing and Materials) C-136 and D-422 standard for sieve and hydrometer analyses,]~~ at the property owner's expense.

~~(b) Structure [is usually not important in soil Groups I and II, and these types of soils shall generally be considered SUITABLE as to structure].~~ The four (4) kinds of soil structure that are most significant in movement of sewage effluent through ~~[Groups III and IV]~~ soils are described as follows:

1. Block-like soil structure - block-like soil structure ~~[in Group III and IV soils]~~ shall be considered PROVISIONALLY SUITABLE. Some rocks even though weathered, such as shales ~~[slates]~~ or creviced or fractured rocks, exhibit block-like structure. Rock shall be considered UNSUITABLE as to structure.

2. Prismatic soil structure - prismatic soil structure is generally considered provisionally suitable unless it is associated with fragipans which shall be considered unsuitable. ~~[found in fragipans or other restrictive horizons and shall be considered UNSUITABLE.]~~

3. Platy soil structure - if Group II, III and IV soils fall out into plate-like sheets, then the soil would have platy structure which shall be considered UNSUITABLE.

4. Absence of soil structure - soils ~~[in Groups II, III, or IV]~~ which are massive or single grain and exhibit no structural aggregates shall be considered UNSUITABLE.

(5) Internal soil drainage.

(a) Internal soil drainage characteristics shall be determined by the following procedures:

1. Comparison of moist soil samples collected throughout the soil profile ~~[from each soil horizon]~~, to a minimum depth of forty-two (42) inches, to standard Munsell notation soil color charts to establish color hue, value and chroma; and

2. Observation of soil profile for evidence of low chroma (chroma 2 or less) without ~~[soil horizons, and]~~ mottling or with mottling, characterized as to abundance, ~~[size]~~ and contrast; or ~~[and]~~

3. Observation of ~~[soil profile for evidence of]~~ freestanding water table ~~[groundwater]~~.

(b) Soils exhibiting ~~[uniform]~~ colors or mottling of greater than

chroma 2 with no freestanding water table to ~~[mottling or free groundwater at]~~ a depth of forty-two (42) inches ~~[or greater]~~ shall be considered SUITABLE with respect to internal drainage, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE.

(c) Soils exhibiting ~~[uniform]~~ colors or mottling of ~~[greater than]~~ chroma 2 or less or freestanding water table starting ~~[with no mottling or free groundwater]~~ at a depth of less than forty-two (42) inches but greater than or equal to twenty-four (24) inches shall be considered PROVISIONALLY SUITABLE with respect to internal drainage, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE.

(d) Soils exhibiting ~~[uniform]~~ colors or mottling of ~~[less than]~~ chroma 2 or less or freestanding water table ~~[and/or mottling, or free groundwater]~~ at a depth of less than twenty-four (24) inches may be classified as PROVISIONALLY SUITABLE, provided that:

1. Soil texture is classified as SUITABLE or PROVISIONALLY SUITABLE; and

2. Soil structure is classified SUITABLE or PROVISIONALLY SUITABLE; and

3. Curtain drains, vertical drains, or other approved methods ~~[drain, vertical drain, or underdrain systems]~~ are installed to intercept lateral water ~~[groundwater]~~ movement, or to lower and maintain the freestanding water table ~~[free groundwater]~~ level to a depth of greater than twenty-four (24) inches.

(e) Soils exhibiting ~~[uniform]~~ colors or mottling of ~~[less than]~~ chroma 2 or less or freestanding water table ~~[and/or mottling, or free groundwater]~~ at a depth of less than twenty-four (24) inches which cannot meet the criteria listed in paragraph (d)1 or 2 of this subsection shall be considered UNSUITABLE.

(6) Soil depth.

(a) Presence of bedrock or large flagstones ("floaters") shall be determined by probing the site and through direct observation of the soil profile. Soil depth shall be considered the vertical distance from the existing ground surface to solid, fractured or rippable bedrock; or to weathered parent material; or to large flagstones which occupy more than thirty (30) percent of the exposed soil profile.

(b) Soil depths forty-two (42) inches or greater shall be considered SUITABLE as to depth.

(c) Soil depths less than forty-two (42) inches, but at least twenty-four (24) inches, shall be considered PROVISIONALLY SUITABLE as to depth.

(d) Soil depths less than twenty-four (24) inches shall be classified UNSUITABLE as to depth.

(e) Where special system design and installation modifications can be made to provide at least eighteen (18) inches of undisturbed naturally occurring soil between the bottom of the lateral field, such soils may be reclassified PROVISIONALLY SUITABLE as to depth.

(7) Restrictive horizons.

(a) ~~[Presence of restrictive horizons such as fragipans, iron pans, clay pans, plow pans, or platy or massive structural grades shall be determined by observation of the soil profile for brittle or dense horizons underlying shallow horizons displaying mottling or concretions of iron or manganese.]~~

~~(b)]~~ Soils in which restrictive horizons are at forty-two (42) inches in depth or greater shall be considered SUITABLE.

~~(c)]~~ Soils in which restrictive horizons are at depths less than forty-two (42) inches, but at least twenty-four (24) inches, shall be considered PROVISIONALLY SUITABLE.

~~(d)]~~ Soils in which restrictive horizons are at depths less than twenty-four (24) inches may be classified PROVISIONALLY SUITABLE, provided that;

~~4.]~~ special system design and installation modifications can be made to provide at least eighteen (18) inches of undisturbed naturally occurring soil between the bottom of the lateral field and the restrictive horizon ~~[or]~~

~~2. The provisions of Section 5(3)(a)2 of this administrative regulation are met.]~~



(d) ~~(4)~~ Soils in which restrictive horizons are at depths less than twenty-four (24) inches which cannot meet the above listed provisions in paragraph (c) ~~(4) 1 or 2~~ of this subsection, shall be considered UNSUITABLE.

(8) Available space.

(a) Sites which have two (2) times the ~~(shall have sufficient)~~ usable land area required to permit the installation ~~[and proper functioning]~~ of an approved on-site sewage disposal system ~~[systems]~~, in addition to the land area to be occupied by existing or proposed structures, or other natural or manmade features of the site which are not compatible with system installation shall be classified SUITABLE as to available space.

(b) Sites which have the usable land area required to permit the installation of an approved on-site sewage disposal system, and the usable land area required to permit the installation of an equivalent approved system, in addition to the land area to be occupied by existing or proposed structures, or other natural or manmade features of the site which are not compatible with system installation shall be classified PROVISIONALLY SUITABLE as to available space.

(c) All other sites shall be classified UNSUITABLE as to available space.

~~(b) For general determination of sufficient usable land area ONLY for the subsurface soil absorption system (lateral field) and NOT including the structure(s) it serves, the pretreatment unit portion of the complete on-site sewage disposal system, or any other site features, the following shall apply for each 100 gallons per day wastewater or fraction thereof:~~

~~1. Uniform slope range of zero to no more than fifteen (15) percent in the system area 1,000 square feet;~~

~~2. Uniform slope range from more than fifteen (15) percent to no more than twenty (20) percent in the system area 1,250 square feet;~~

~~3. Uniform slope range from more than twenty (20) percent to no more than twenty-five (25) percent in the system area 1,500 square feet;~~

~~4. For each five (5) percent increase, or fraction thereof over twenty-five (25) percent add an additional 250 square feet;~~

~~5. The above figures are based upon space requirements for a conventional trench type lateral field installed in a Group III provisionally suitable soil and does not include any minimum setback distances which may apply on any given site. Group IV soil sites will require more space than indicated, and Groups I-III suitable soil sites will require less, as will most other modified or alternative subsurface soil absorption systems.~~

~~(c) Sites classified PROVISIONALLY SUITABLE shall have a minimum repair area equal to 100 percent of the land area occupied by the lateral field set aside in addition to the space required in paragraph (b) of this subsection.~~

(9) Determination of overall site suitability. All of the criteria in subsection (2) through (8) of this section shall be determined to be SUITABLE, PROVISIONALLY SUITABLE, or UNSUITABLE as indicated. If all criteria are classified the same, that classification will prevail. However, it is unlikely that all criteria will be classified the same in all situations. Where there is a variation in classification of the several criteria, the following shall be used in making the overall site classification. The lowest classification ~~[of the uncorrectable characteristics]~~ will determine the overall site classification.

(a) If the topography is classified as UNSUITABLE it may be reclassified PROVISIONALLY SUITABLE under the conditions outlined in subsection (2) of this section.

(b) If the landscape position, soil texture, soil structure, internal drainage, or depth to restrictive horizon is classified as UNSUITABLE, and cannot be reclassified as PROVISIONALLY SUITABLE through modification the overall classification will be UNSUITABLE regardless of the other criteria unless the provisions of Section 4 ~~[5](6)~~ of this administrative regulation are met.

(c) When soil depth is classified as UNSUITABLE, it may be reclassified as PROVISIONALLY SUITABLE under the conditions outlined in subsection (6)(e) of this section.

Section 4. ~~[5.]~~ Site Classification and System Restrictions. (1) Restrictions shall be placed upon the types of on-site sewage systems which will be approved for use due to site limitations ~~[and/or]~~

daily waste load volume. Such restrictions shall be determined by the following conditions, and the modified or alternative system(s) listed shall be considered as the minimum acceptable system(s).

(2) On sites with an overall evaluation rating of SUITABLE a conventional subsurface soil treatment and dispersal ~~[absorption]~~ system (twenty four (24) inches deep), may ~~[shall]~~ be permitted.

(3) On sites with an overall rating of PROVISIONALLY SUITABLE (the provisionally suitable rating was originally granted or site modifications were made raising an unsuitable rating to that level) due to:

(a) Depth to rock, water table, or restrictive horizon.

1. Twenty-four (24) inches but less than forty-two (42) inches - a shallow (six (6) - twenty-three (23) inch deep) modified conventional trench, or other approved systems with ~~[gravelless pipe, or low pressure pipe (LPP) system, with a minimum of ten (10) inches of fill soil above the trench barrier material and]~~ a minimum separation distance of eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon.

2. ~~[Eighteen (18) inches to less than twenty-four (24) inches (for soils with restrictive horizons only)]~~ a shallow (six (6) inches to eleven (11) inches deep) modified conventional trench, gravelless pipe, or low pressure pipe (LPP) system with a minimum of ten (10) inches of fill soil above the trench barrier material; a corresponding minimum separation distance of twelve (12) to seventeen (17) inches between trench bottoms and the restrictive horizon; a two (2) foot increase in minimum spacing between individual trenches; and, a twenty-five (25) foot increase in minimum setback distances downslope of the lateral field.

3. ~~[Eighteen (18) inches to less than twenty-four (24) inches - (for soils with rock or water tables only)]~~ a mound system; other approved system that maintains a minimum separation distance of eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon; or, sufficient filling of the area with suitable soil to allow installation of a modified or alternative system after a one (1) year settling period. A minimum separation distance of twelve (12) to eighteen (18) inches between trench bottoms and rock, water table, or restrictive horizon may be considered on a case-by-case basis with additional approved treatment technology such as: peat filter systems, sand filter systems, aerobic units, and drip irrigation systems, two (2) tanks in a series, dual compartment septic tanks, approved effluent filters, and constructed wetlands cells.

3. ~~[4.]~~ Less than eighteen (18) inches - filling of the area with suitable soil to sufficient depth to allow modified or alternative system installation after a one (1) year settling period.

(b) Soil texture or structure.

1. Soil Group III - any approved ~~[a conventional]~~ system.

2. Soil Group IV - a conventional trench system modified by the use of additional ~~[multiple septic tanks in series or an aerobic]~~ pretreatment ~~[unit]~~ as outlined in Section 6 ~~[8](2)~~ of this administrative regulation. Such systems may also be required to be modified by the use of alternating ~~[alternate]~~ lateral fields; by dosing tank and pump or siphon; by dosed alternating ~~[alternate]~~ lateral fields; by dosed automatic alternating lateral fields; or by the use of a low pressure pipe (LPP) system; by a lagoon and lateral field system; or by other ~~[alternative]~~ systems approved ~~[for such use]~~ by the cabinet for use in Group IV textured soil. All gravity flow distribution systems in ~~[Modified conventional trench systems on sites with]~~ this soil group shall use equal flow distribution boxes only.

(4) On sites where available space for the installation of an approved system is inadequate:

(a) Installation of permanent one and six-tenths (1.6) gallon or less low-volume flush water closets or nonwater carriage toilet devices shall be required.

(b) As much lateral footage of the most space efficient approved system, but no less than fifty (50) percent of the required minimum lateral footage for that system, discharging into a holding tank which is at least equal in capacity to the required pretreatment unit. ~~[is restricted due to site size or topography]~~

(a) A conventional system with lateral beds in lieu of trenches or a combination of trenches and beds; or installation of as much linear footage of lateral trench and/or bed as can be installed using hillside or drop distribution with overflow from the last box in series going into a holding tank.

(b) A low pressure pipe (LPP) system.



~~(c) Installation of permanent low volume flush water closets or nonwater carriage toilet devices to reduce wastewater load.~~

(5) On sites where a PROVISIONALLY SUITABLE rating was initially obtained (or was obtained after site modifications), which may be affected by a combination of site limitations, the on-site system(s), whether conventional, modified, or alternative, which will overcome all limitations involved shall be installed.

(6) Sites ~~originally~~ classified as UNSUITABLE may be used for on-site sewage disposal systems, provided engineering, hydrogeologic, and soil studies indicate to the cabinet ~~[local health department]~~ that a suitable on-site sewage disposal ~~[conventional system or a suitable modified or alternate]~~ system can reasonably be expected to function satisfactorily. Such sites may be reclassified as PROVISIONALLY SUITABLE upon submission to the cabinet ~~[local health department]~~ of the following:

(a) Adequate substantiating data ~~[including a percolation test]~~ to indicate that an on-site sewage disposal system can be installed so that the effluent will receive adequate treatment and proper disposal;

(b) Adequate substantiating data to indicate the effluent will not contaminate any drinking water supply, groundwater ~~[used for drinking water]~~, perched water, or ~~[any]~~ surface water;

(c) Adequate substantiating data to indicate that the effluent will not be exposed on the ground surface ~~[where it could come in contact with people, animals, or vectors]~~.

(7) Sites originally classified as UNSUITABLE due to soils that have been structurally damaged may be upgraded to provisionally suitable provided the following conditions are met:

(a) Structural damage must be limited to a maximum depth of six (6) inches from the original ground surface;

(b) Trench depth must be at least six (6) inches deeper than the damaged layer;

(c) All required vertical separation distances to rock, water table, or any other restrictive horizons must be maintained;

(d) Soil rectification must be performed using one (1) of the following methods:

1. Mechanically renovated with a chisel plow or other similar device when the damaged soil is adequately improved by lifting. The lifting will be two (2) inches below the damaged layer; or

2. The structurally-damaged soil may be removed and replaced with Group III or better soil with a suitable or provisionally-suitable structure.

(e) Following soil rectification the site must be reevaluated by a certified inspector prior to installation of the system.

[Section 6. Percolation Testing Standards. (1) Local health departments may require percolation testing, when deemed necessary to confirm site evaluation findings, only on sites where the original, naturally occurring soil horizons have been destroyed, commingled or buried through strip mining, road cutting, filling or other disruptive site modifications in the area proposed for system installation. Such percolation testing results shall be used to determine the relative ability of the commingled fill material to accept effluent. When such a test is deemed necessary it shall be performed in the presence of a certified inspector.

(2) All percolation tests shall be performed in accordance with the procedures outlined in this section. Such tests meeting all procedure standards shall be considered "approved."

(3) Excavation of test holes.

(a) Test holes shall be located on each site within the staked area designated by the certified inspector.

(b) A minimum of four (4) test holes shall be dug in this area to the depth of the proposed lateral field as specified by the site evaluation.

(c) Test holes shall be located in the designated area so as to provide uniform coverage of the area, with no more than a fifty (50) foot spacing between centers of adjacent test holes.

(d) Test holes shall be six (6) to eight (8) inches in diameter.

(e) After excavation, all holes shall be scarified in the lower twelve (12) inches of the hole to break up smearing and restore absorption surfaces.

(f) All loose soil material shall be removed from test holes to reduce puddling and sealing of soil pores by fine soil materials.

(g) A portion of the excavated materials from the test holes shall be mounded around each hole to prevent surface water run off from

entering the hole in the event of rainfall during the period preceding and continuing through the conduct of the test.

(4) Presoaking of test holes.

(a) In soils which do not exhibit surface or subsurface cracking in dry weather (low shrink-swell potential), the test holes shall be presoaked by filling with water for at least fourteen (14) hours prior to the test.

(b) In soils which exhibit surface or subsurface cracking during dry weather due to moderate to high shrink-swell potential (Soil Group IV), the soil surrounding the test holes shall be saturated at least three (3) days by maintaining at least twelve (12) inches of water in each hole during that period. After completion of the swelling procedure stated above, test holes shall be left for a period of fourteen (14) hours before proceeding with measurement procedures. In lieu of the above procedure, testing for such soils may be conducted using the presoak procedure outlined in paragraph (a) of this subsection, when such tests are conducted during the months of December through April.

(5) Conduct of test measurements.

(a) All measurements shall be made from fixed reference points establishing the bottom of the test hole and a point exactly six (6) inches above the bottom. Measurement shall be made using calibrated measuring sticks, calibrated instruments or devices using floats, or other such equipment acceptable to the cabinet.

(b) In test holes containing more than six (6) inches of water remaining after the presoaking/swelling period (assuming significant rainfall has not occurred between the completion of presoak/swelling procedures and the start of test measurement), the water depth shall be recorded and considered as prima facie evidence of an unsatisfactory percolation rate.

(c) In test holes containing six (6) inches or less of water remaining after the presoaking/swelling period, the water shall be adjusted to a six (6) inch depth and testing period.

(d) Water added to test holes for testing purposes shall be free of sediment and foreign material, and shall be added in such a manner that slaking and scouring of test hole surfaces is minimized.

(e) Testing on each hole shall begin by adjusting the water depth as in paragraph (c) of this subsection, followed by measurement of the amount of decrease in water depth at the end of a one (1) hour period from the six (6) inch reference point. Measurements shall be recorded on forms supplied by the cabinet for this purpose. Such measurements shall be recorded to the nearest one-eighth (1/8) inch.

(f) After first hour measurements, all test holes shall be readjusted to the six (6) inch water depth and remeasured and recorded at the end of another one (1) hour period. This process shall be repeated for a total four (4) hour period. The hourly periods for each test hole shall begin at the time the water depth is readjusted to six (6) inches. Actual time at which the test was initiated on each hole shall be recorded.

(g) The fourth hour readings of all test holes shall be averaged and the result recorded on the report form as the equilibrium rate, or consistent rate of acceptance.

(h) For percolation testing in Group I soils the time period between readings shall be reduced to ten (10) minute intervals for at least four (4) successive readings. The percolation rate in inches per hour for all holes shall be calculated from the results thus obtained, and the last reading averaged to obtain the equilibrium rate.

(i) In the event the rate of acceptance in any of the test holes is not consistent, the affected test hole or holes shall continue to be tested until a consistent rate is obtained. The rate(s) thus obtained for the affected hole(s) shall be used in calculating the equilibrium rate. A consistent rate shall be considered to have been obtained when the acceptance rate for an affected test hole remains the same, or decreases no more than one-half (1/2) inch, on two (2) consecutive hourly measurements.

(j) When test holes fail to meet the minimum acceptance rate of one-half (1/2) inch per hour, the area represented by the hole or holes involved shall be removed from consideration for placement of the lateral field system. In the event that the area represented by the failing hole or holes reduces the usable (passing) area to the extent an approved system cannot be installed, or a failing equilibrium rate for all holes is obtained, the site shall be considered unacceptable for a subsurface sewage disposal system, if percolation test findings

confirm similar site evaluation findings.

**Section 7. Certification to Conduct Percolation Tests and Approval of Consultants.** (1) No person shall offer service to conduct percolation tests until they have met the requirements of this section and have been issued certification.

(2) All persons who propose to offer such service shall submit their name, occupation, professional registration number, and address to the cabinet.

(3) Persons eligible for certification shall include:

- (a) Engineers;
- (b) Land surveyors;
- (c) Architects;
- (d) Soil scientists;
- (e) Registered sanitarians;
- (f) Geologists.

(4) To be eligible for recertification the persons listed in subsection (3) of this section shall possess a valid professional registration, license, certificate or other such document, issued by the respective profession's registration, licensure, or certification board, agency, committee, or other recognized body within the state of Kentucky. Failure to maintain professional registration shall result in the suspension of certification to conduct percolation tests until such registration is reestablished.

(5) Persons meeting eligibility requirements shall be issued a certification number, which shall be placed on all percolation test report forms, and any additional documents related thereto.

(6) Persons seeking certification may be required to demonstrate their ability to conduct percolation tests in accordance with the standards in Section 6 of this administrative regulation prior to receiving such certification.

(7) All certified persons shall be subject to unannounced monitoring by the cabinet, while conducting percolation tests, to determine if standards are being met.

(8) When the cabinet finds that improper testing or test reporting practices exist, the certified person involved shall be subject to suspension or permanent revocation of such certification.

(9) Whenever suspension or revocation proceedings are initiated by the cabinet, the certified person shall have the right to request a hearing before the cabinet to present evidence on his behalf as to why the intended action should not be taken.

(10) Whenever the cabinet has suspended or revoked certification for cause, the cabinet shall provide notification to the appropriate professional body(ies) with which the person affected is registered, licensed, or certified, for any further action they deem necessary.

**Section 5. [(44)] Approval of Consultants.** (1) The cabinet may, as it deems necessary, grant limited approval to eligible persons to perform tentative site evaluations ONLY for subdivisions proposed for development which intend to utilize on-site sewage disposal systems for sewage disposal.

(a) Persons eligible for approval as consultants shall include:

1. Professional [Registered] engineers;
2. Registered architects;
3. Soil scientists;
4. Professional geologists;

5. Former fully certified inspectors who are no longer employed by the cabinet or its agents and whose certification has not been suspended or revoked, but was rescinded upon termination of employment.

(b) The cabinet may require attendance at training seminars and competency testing as a condition of maintaining approved status.

(2) To be eligible for approval the persons listed in this section shall possess a valid professional registration, license, certificate or

other such document, issued by the respective profession's registration, licensure, or certification board, agency, committee, or other recognized body within the state of Kentucky.

(3) Whenever suspension or revocation proceedings are initiated by the cabinet, the certified person shall have the right to request a hearing before the cabinet to present evidence on his behalf as to why the intended action should not be taken.

(4) Whenever the cabinet has suspended or revoked certification for cause, the cabinet shall provide notification to the appropriate professional body(ies) with which the person affected is registered, licensed, or certified, for any further action they deem necessary.

[(c) Approval granted under this subsection may be suspended or revoked for cause, and the procedures outlined in subsections (9) and (10) of this section shall apply, as applicable.]

**Section 6. [8.] System Sizing Standards.** (1) Design waste flows. Daily waste flow volumes for system design and sizing purposes shall be computed for each residential unit, business or commercial facility, or other public facility, based upon the design flow per designated flow unit listed in Table 1 below, times the number of such flow units involved.

(a) [When approved permanent low-volume flush water closets using one (1) gallon or less of water per flush cycle are installed exclusively in any residence, commercial facility or other public facility, the daily design waste flow unit for that specific residence or facility may be reduced to the figure given in Column B in Table 1.

(b) [When approved permanent nonwater carriage water closet type devices (composting toilets, incinerator toilets, oil carriage toilets, etc.) are installed exclusively in any residence and no other blackwater type wastes are created, the daily design waste flow unit for that specific residence may be reduced to the figure given [in Column C] in Table 1.

(b) [(c)] No daily waste flow unit reduction shall be granted for installation of nonpermanent flow reduction devices such as: showerheads, showerhead or faucet inserts, suds-saver type automatic washing machines, or other such devices. Use of water saving devices including low-volume flush water closets, may be required by the cabinet when deemed necessary due to site limitations.

(c) [(d)] All on-site sewage systems which receive a design daily waste flow of 2,000 gallons or more [(or require more than 1,000 lineal feet of lateral field)] shall be designed to provide dosing of the lateral field through the use of dosing tanks and pumps or siphons, or through the installation of a low pressure pipe (LPP) system.

(d) When proposing to use an on-site sewage disposal system for a nonresidential source of sewage, the applicant may be required to provide the following information to the cabinet:

1. Information to show the sewage does not contain industrial wastewater;

2. Information to establish the potential sewage strength and to identify chemicals found in the sewage that are not typically found in residential sewage; and

3. A design to provide pretreatment of the sewage to at least residential septic tank effluent quality.

(e) The following businesses or facilities shall not be approved for disposal of waste waters into an on-site sewage disposal system due to the nature of the wastes generated or the high volume of wastewater created:

1. Laundromats except on an experimental basis as provided under Section 8(14) of this administrative regulation;
2. Car washes;
3. Livestock slaughterhouses (kill room wastes only);
4. Funeral parlors or mortuaries (embalming wastes only); and
5. Factories (industrial or process wastes only).

Table 1 Design Daily Waste Flow				
Source of Sewage Dwelling Units[-]	Units	Gallons/Unit/Day		
		Standard	Column B [Column B]	Column B [C]
Single family residences	Each bedroom	120	96	90
Hotels or motels	Each room	100	80	

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Apartments/condominiums/townhouses	Each bedroom	120	96	
Rooming houses	Each bedroom	120	96	
Mobile home parks	Space	300	No reductions	
Commercial/Industrial:				
Retail stores	Each toilet room	200	120	
Malls, shopping centers	Each 1000 sq. ft.	200	120	
Offices	Employee	20	12	
Medical offices (with laboratories)	Employee	50	40	
Dental offices (with water rinse units)	Exam chair	250	200	
Dental offices (with suction units)	Exam chair	50	40	
Veterinary office (add for animal grooming)	Clinic	250		
(add for animal boarding)	per animal	10		
Dog kennels	per animal	10		
Industrial buildings	per dog	5		
(Add for showers)	Employee/shift (does not include process water or cafeteria)	20	12	
Construction site	Employee/shift	10	No reductions	
Visitor center	Employee/shift	20	12	
Barber shops	Visitor	5	3	
Beauty shops	Chair	75	60	
Laundromats: (experimental only)	Chair	125	100	
Eating and drinking establishments:	Machine	300	No reductions	
Restaurant (does not include bar or lounge)	Meal/seat	15	12	
Bar or lounge	Seat	20	16	
Drive-in (no public restrooms)	Establishment [Established]	500	No reductions	
Drive-in (with public restrooms)	Car stall	20	16	
Food markets:				
Prepackaged	Store	250	No reductions	
Food processing:	Store	1,000	900	
(with eat-in delicatessen)	Meal/seat	15 Additional	12 Additional	
(with [without] carryout delicatessen)	Store	250 (Additional)	250 Additional	
Rabbit[, ] or fish processors (with solid waste separation)	Employee/shift	20	12	
Institutional (includes food service):	per animal or fish processed	0.5	No reduction	
Hospitals and surgical centers				
Mental	Each bed	300	240	
Prison or jail	Each bed	100	80	
Nursing home, rest home	Each inmate bed	100	80	
Schools and Churches (includes food service):	Each resident bed	100	80	
Elementary, day care, kindergarten	Student	25	20	
High school	Student	35	28	
College	Student	35	28	
Boarding school	Student	60	48	
Churches:				
(without kitchen facilities)	Average attendance/person	3	2	
(with kitchen facilities)	Average attendance/person	5	4	
Recreational:				
Recreational vehicle park (sewer hook-ups [with sewers] to each space)	Space	125	No reductions	
(with central bath only)	Space	75	60	
Dump station only	Space	25	No reductions	
Day camp (no meals)	Person	15	12	
Residential camp (includes cafeteria)	Person	60	48	
Resorts/housekeeping cabin	Bedroom	120	96	
Tent camping areas w/central bath	Space	75	60	
Country clubs (does not include food service)	Member	15	12	
Golf courses	Average attendance/person	10	8	
Swimming pools	Design capacity/person	10	8	
Picnic parks, sports facilities, ball parks:				
(with toilet only)	Average attendance/person	5	3	
(with food service)	Average attendance/person	8	6	
Movie theaters	Seat	5	3	
Drive-in theaters (includes food service)	Space	15	12	
Skating rink/dance hall	Person (based on rated capacity)	10	8	
Bowling alley	Lane	100	80	
Transportation:				

Airport, bus or rail depot Auto service station	Passenger	5	3	
	Each water closet or urinal	250	450	

(2) Residential pretreatment units. All septic tanks used in single-family residence on-site sewage disposal systems shall meet the minimum working liquid capacities listed below, based on the number of bedrooms involved. Aerobic units or other types of approved pretreatment units shall be sized according to their rated treatment capacities in gallons per day, based upon the design daily waste flow per design unit given in Table 1.

(a) On sites with soils of Soil Group IV, additional pretreatment shall be provided by use of one (1) of the following methods:

1. ~~(a)~~ Installation of multiple septic tanks in series. The first tank, receiving raw sewage from the residence shall be of the required minimum capacity in Table 2, ~~or of at least 1,000 gallons capacity~~. Additional tanks shall be installed in series as needed to provide a total capacity equal to the required minimum plus an additional fifty (50) percent;

2. ~~(b)~~ Installation of an aerobic pretreatment unit. For those aerobic units which do not include an integral trash or primary settling chamber in their construction, such shall be provided by the series installation of a minimum 1,000 ~~[500]~~ gallon septic tank to receive raw sewage, with effluent discharging into the aerobic unit.

3. Installation of multiple compartment septic tanks. The first compartment, receiving raw sewage from the residence shall be of the required minimum capacity in Table 2. The second compartment shall have a total capacity equal to at least fifty (50) percent of the first compartment.

4. Permanent installation of effluent filters. The effluent filter shall be a maximum screen size of one-sixteenth inch and installed either inside or following a properly-sized septic tank. Access to filters must be provided to finished grade.

(b) Subsurface flow constructed wetlands on-site sewage disposal systems shall include one (1) of the following pretreatment options:

1. Two (2) septic tanks in series and an approved commercial-sized filter located at the outlet end of the second tank; or

2. A two (2) compartment septic tank and an approved commercial-sized filter located at the outlet end of the second compartment;

or

3. An aerobic unit and an approved commercial-sized filter installed either internally or externally on the outlet pipe.

(c) All pretreatment units for subsurface flow constructed wetlands shall be sized the same as pretreatment units for Group IV textured soil.

Where required minimum tank capacities for residential systems exceed 1,000 gallons and larger capacity tanks are unavailable, serial installation of multiple tanks is permitted to obtain the necessary capacity. In such instances the first tank in series shall have a minimum capacity of 1,000 gallons.

Number of Bedrooms	Gallon Capacity (Without Garbage Disposal)	Gallon Capacity (With Garbage Disposal)
<del>2 or less</del>	<del>750</del>	<del>1,000</del>
3 or less	1,000	1,250
4	1,250	1,500
5	1,500	1,750
Each Additional	250	250

(3) Commercial and public facility pretreatment units.

(a) Minimum working liquid capacities for all septic tanks for commercial and public facility on-site sewage disposal systems shall be determined by multiplying the daily design waste flow per unit times the total number of such units, plus an additional fifty (50) percent of that figure for solids storage. (Gallons/unit/day X Number of Units) + 50% = MINIMUM CAPACITY REQUIRED.

(b) Procedures and requirements listed in subsection (2) of this section relative to: sites with soils in Soil Group IV; subsurface flow constructed wetlands; aerobic and other types of pretreatment units; and use of multiple tanks in series to obtain required capacity; shall also apply to commercial facility system installation.

(c) Establishments with food preparation or food processing

facilities shall be required to install adequately-designed and approved pretreatment units to reduce FOG, BOD-5, and TSS to a level typically found in residential septic tank effluent. In these instances the applicant may be required to submit data from comparable facilities to determine the establishment's potential effluent strength.

(d) All commercial or public facilities engaged in the manufacture, processing, preparation, and service of food and food products shall be provided with an approved grease trap. All wastewater drain piping from food processing equipment; sinks for washing of food, equipment and utensils; dishwashers; and floor drains in food preparation and processing areas shall be separated from other wastewater piping, and discharge into a grease trap prior to entrance into an on-site sewage disposal system. ~~Minimum liquid capacity of grease traps shall be based upon the total design daily waste flow for the facility served.~~ Grease trap capacity shall be a minimum of 500 ~~[450]~~ gallons for daily waste flows of 6,000 ~~[4,000]~~ gallons or less; and 1,000 ~~[300]~~ gallons for daily waste flows greater than 6,000 ~~[of 4,001 to 8,000 gallons; and 500 gallons for daily waste flows greater than 8,000]~~ gallons. All grease traps shall be placed outside of the structure ~~[served unless special approval is granted by the cabinet]~~. In all instances the grease trap shall be located as close as practicable to the source of the wastewater to prevent separation of grease prior to entry into the grease trap.

(4) Sizing of gravity distribution lateral fields. All gravity distribution lateral fields for on-site sewage disposal systems shall be sized based upon the design daily waste flow for the residence, commercial or public facility involved as determined from Table 1. The total daily waste flow multiplied by the linear footage requirement per gallon found in Table 3 for the specific site soil characteristics, shall determine the minimum linear footage of lateral trench required.

Soil Group	Soil Texture Classes	Application Rate Gal/Sq. Ft./Day	Linear Ft. Per Gallon
I Sands	Sand	1.2	.42
	Loamy Sand	.9	.56
II Coarse loams	Sandy Loam	.7	.72
III Fine loams (with suitable structure)	Sandy Clay Loam		
	Silt Loam	<del>[.5]</del>	<del>[1.0]</del>
	Silt	.5	1.0
	Clay Loam		
	Silty Clay Loam		
Fine loams (with provisionally-suitable structure)	Sandy Clay Loam		
	Silt Loam	<del>[.37]</del>	<del>[1.35]</del>
	Silt	.37	1.35
	Clay Loam		
	Silty Clay Loam		
IV Clays (Kaolinitic or mixed mineralogy <del>[4:4]</del> with provisionally-suitable structure)	Sandy Clay		
	Silty Clay	<del>[.27]</del>	<del>[1.85]</del>
	Clay	.27	1.85

(5) Sizing of low pressure piping distribution lateral fields. All low pressure piping (LPP) distribution lateral fields for on-site sewage disposal systems shall be sized based upon the calculated total design daily waste flow for the residence, commercial or public facility involved as determined from Table 1. The total daily waste flow divided by the allowable daily loading rate found in Table 4, for the specific site soil characteristics, shall determine the minimum square footage of absorption area required. ~~Further system design requirements shall be determined based upon the criteria and specifications given in the North Carolina State University Publication UNC-SC-82-03, "Design and Installation of Low-Pressure Pipe~~

## Waste Treatment Systems"]

Soil Texture Group	Soil Texture Classes	Rate Gal/ Sq.Ft./Day
I Sands	Sand	0.5
	Loamy Sand	
II Coarse Loams	Sandy Loam	0.4
	Loam	
III Fine Loams (with suitable structure)	Sandy Clay Loam	0.3
	Silt Loam	
	Silt	
	Clay Loam	
	Silty Clay Loam	
Fine Loams (with provisionally-suitable structure)	Sandy Clay Loam	0.1714
	Silt Loam	
	Silt	
	Clay Loam	
	Silty Clay Loam	
IV Clays (Kaolinitic or mixed mineralogy [4:4] with provisionally- suitable structure)	Sandy Clay	0.1
	Silty Clay	
	Clay	

(6) Sizing of gravelless pipe systems. Gravelless pipe in eight (8) and ten (10) inch internal diameter sizes only, may be used in lieu of standard lateral trenches for all conventional and modified conventional lateral field applications. ~~(except those in Group IV soils where gravelless pipe is permitted only on an experimental basis.)~~ Linear footage requirements listed in Table 3 shall also apply to gravelless pipe. Gravelless pipe shall not be permitted in Group IV textured soils.

(7) Sizing of gravity distribution lateral beds. When lateral beds are permitted in lieu of standard two (2) foot wide lateral trenches, the required total length of standard lateral trench needed shall be calculated from Tables 1 and 3 information. That figure shall be multiplied by the percentage shown on Table 5, for the bed width intended for use. The number of linear feet resulting shall be the amount required for installation for that particular bed width.

Bed Width	Multiply Total Linear Footage of Two (2) Foot Wide Trench Required By:
3'	70%
4'	55%
5'	45%
6'	40%
7'	35%
8'	32%
9'	30%
10'	28%
11'	27%
12' or wider	26%

(8) Sizing of leaching chamber systems. Leaching chamber systems may be used in lieu of standard lateral trenches ~~for all conventional and modified conventional lateral field applications and for experimental alternative systems on slopes of no more than ten (10) percent for trench installation and no more than five (5) percent for bed installation.~~ Linear footage requirements for chambers shall be based on nominal internal chamber width as follows:

(a) In trench configuration - for nominal widths of fifteen (15) to twenty-one (21) inches, 100 percent of Table 3; twenty-two (22) to twenty-seven (27) inches, seventy (70) percent of Table 3; twenty-eight (28) [inches] to thirty (30) inches, sixty (60) percent of Table 3; thirty-one (31) to thirty-six (36) inches, fifty-five (55) percent of Table 3; thirty-seven (37) to forty-one (41) inches, fifty (50) percent of Ta-

ble 3; [required linear footage for nominal widths of] forty-two (42) [inches] to forty-four (44) inches, forty-five (45) percent of Table 3 required linear footage.

(b) In bed configuration - for all chamber widths eighty-five (85) percent of Table 5 linear footage requirements based on total bed width to nearest foot.

(c) Other chamber designs with nominal widths outside the ranges listed in paragraph (a) of this subsection shall be sized on a case-by-case basis, accordingly.

(9) Sizing of gravity distribution alternate lateral fields or beds. When alternate gravity distribution lateral fields or beds are used or required, the individual alternate lateral fields or beds shall each contain one-half (1/2) of the total linear footage required for the system. Such alternate lateral fields or beds shall be alternated in use on a yearly basis through the use of an approved alternating valve or device.

(10) Sizing of dosed gravity distribution automatic alternating lateral fields or beds. When dosed automatic alternating lateral fields or beds are used or required, the individual alternating lateral fields or beds shall each contain one-half (1/2) of the total linear footage required for the system. Dosed automatic alternating lateral field or bed systems shall be designed and operated so as to alternate between lateral fields or beds with doses of effluent, through the use of two (2) or more dosing siphons or pumps controlled by an automatic alternating device, or by dosing simultaneously.

(11) Sizing of combination evaporation [evapotranspiration]/absorption lagoon and lateral field systems. On sites with Group IV soils where a conventional lateral field system or alternative system cannot be installed due to heavy clay soils with poor or no structure conditions, a combination evaporation [evapotranspiration]/absorption lagoon and shallow lateral field system may be considered for installation. Total daily waste flow shall be determined by using Table 1, and the total square footage of lagoon waste surface area shall be calculated by multiplying the total gallons of waste flow per day by five (5) square feet per gallon. Effluent entering the lagoon shall have passed through a properly sized pretreatment unit, according to the provisions of Table 2 and subsection (3)(a) of this section. The overflow from the lagoon [and overflow] shall be directed to an approved [a shallow (six (6) inches to eighteen (18) inches depth)] lateral field according to the provisions of Section 4 of this administrative regulation. Lagoon overflow [Such] lateral field size for two (2) foot wide gravel field trenches shall be calculated by multiplying the total daily waste flow in gallons by .10 linear feet per gallon.

(12) Sizing of mound systems. Mound systems ~~used to overcome site conditions of shallow depth to rock or water tables, or slowly permeable soils~~ shall be designed and sized based upon the information and criteria given in the United States Environmental Protection Agency publication EPA 625/1-80-012 "Design Manual, On-site Wastewater Treatment and Disposal Systems," Chapter 7.2.4 on Mound Systems. All mound systems shall use pressure distribution of effluent in the absorption area. Mound fill material shall be coarse ASTM C-33 sand that meets the following criteria: less than twenty (20) percent (by weight) material that is greater than 2mm in diameter and less than five (5) percent (by weight) material that is less than 0.053 mm in diameter. The design loading or filtration rate shall be one (1.0) gpd/sq.ft. for residential septic tank effluent. The sand fill material shall not be included in the measurement of the vertical separation distance between the absorption area and a restrictive horizon, rock, or water table.

(13) Sizing of subsurface flow constructed wetlands systems. Constructed wetlands cells shall contain a minimum of one and three-tenths (1.3) cubic feet of fill material for each one (1) gallon of total daily waste flow. Total interior square footage shall be based on one and three-tenths (1.3) cubic feet per one (1) gallon of total daily design wastewater; if twelve (12) inches of fill material is used, then the square footage equals the cubic footage. The length to width ratio of the cell(s) shall range between three (3) to one (1) and five (5) to one (1) for gravity flow. The length to width ratio for pressure distribution shall be determined based on system size and available installation area. The overflow lateral field footage shall be calculated by using fifty (50) percent of the standard sizing for the chosen type of system; all approved lateral field types shall be acceptable.

(14) [14] Sizing of residential laundry waste systems. When, in



the cabinet's opinion, improved system performance may be attained by separating laundry greywater waste flows from other residential waste flow for new system installations, or as repair for existing systems, such separation shall be accomplished in the following manner:

(a) Greywater sewer for the washing machine shall be separated from the main house sewer;

(b) All residential laundry greywater waste systems shall be installed according to the results of the site evaluation of the grey-water installation area.

(c) Sizing shall be calculated on fifteen (15) percent of total daily waste flow multiplied by the linear feet per gallon specified in Table 3 for a conventional two (2) foot wide trench. ~~Laundry greywater shall discharge into a lateral bed or trench (c) of a minimum of 100 square feet of bottom surface soil absorption area for a two (2) bedroom residence and an additional fifty (50) square feet for each additional bedroom.~~

(d) ~~(c)~~ On new system installations where laundry wastewater separation is permitted a fifteen (15) percent reduction in the primary system lateral field requirements shall be allowed only for sites with soils in Soil Groups I-III. On sites with soils in Soil Group IV such separation may be required but no system site reduction will be granted.

(15) ~~(14)~~ Sizing of other on-site sewage disposal systems. Other alternative systems not specifically mentioned in this administrative regulation, or experimental systems, shall be sized according to applicable standards on a case-by-case basis by the cabinet. Such sizing shall be based upon site characteristics, effluent characteristics, pretreatment processes, technology involved, and other demonstrable factors.

(16) ~~(15)~~ Sizing of dosing tanks. Dosing tanks shall be of sufficient capacity to hold two (2) times the total design daily waste flow calculated from Table 1 ~~for single family residential structures, and one and one half (1 1/2) times for commercial and public facilities.~~

(17) ~~(16)~~ Use ~~and sizing~~ of holding tanks. Holding tanks shall only be permitted under the following conditions:

(a) When written official verification is submitted to the cabinet that a municipal sewer system will be available within a maximum two (2) year period; or ~~For single family residences, commercial and public facilities where written official verification is submitted that a municipal sewer system will be available within a maximum two (2) year period; as an addition to a new or existing system due to limited space precluding required full system installation or existing system expansion; and, as per paragraph (c) of this subsection.]~~

(b) When a commercial or public facility has a daily wastewater flow of less than 200 gallons per day; or ~~For commercial and public facilities only where less than 200 gallons per day total wastewaters are involved and no other feasible method of wastewater disposal is available due to site limitations.]~~

(c) During a one (1) year waiting period for soil to settle in an area that has been filled with topsoil in accordance with Section 7(5) of this administrative regulation; or ~~For all residential, commercial, and public facilities when site limitations preclude immediate system installation, the local health department certified inspector may grant usage of a holding tank to allow use of the structure served, during a one (1) year settling period for system area fill soil which will enable an approved system to be installed.]~~

(d) To repair an existing septic system when no other means of repair is available; or ~~In all situations where holding tanks are permitted, installation of low volume flush (one (1) gallon or less) water closets shall be mandatory, as shall be the installation of an audible or visible, electrically operated alarm system located within the structure served.]~~

(e) To expand an existing system for a single family residence when no other means of expanding the system is available; or

(f) As listed in Section 4(4)(b) of this administrative regulation; or

(g) In all situations where holding tanks are permitted, installation of low-volume flush (one and six-tenths (1.6) gallons or less) water closets shall be mandatory; or

(h) In all situations where holding tanks are permitted, installation of an audible and visible alarm system shall be located within the structure served or in a high pedestrian traffic area within sight of the structure served; or

(i) In all instances in which holding tanks are used, a copy of a

contract with a licensed septic tank cleaning company, or other management entity, for servicing the holding tank shall be submitted with the permit application. The owner shall maintain records on all servicing which shall be available for inspection by the cabinet. Local health departments may also require the posting of a cash performance bond by the property owner.

(18) Sizing of holding tanks. Holding tanks shall be sized as follows:

(a) Holding tanks installed to repair an existing system, or as an addition to a new system, or added to expand an existing system, shall be sized the same as the required pretreatment unit.

(b) All other holding tanks shall be sized to hold a minimum seven (7) days wastewater for the structure served. ~~All holding tanks shall be sized to hold a minimum seven (7) day wastewater and serviced in accordance with KRS 211.070 to 211.090. A copy of a contract with a licensed septic tank cleaning company for servicing the holding tank shall be submitted with the permit application. The owner shall maintain records on all servicing which shall be available for inspection by the cabinet. Local health departments may also require the posting of a reasonable cash performance bond by the owner.]~~

Section 7. ~~(9.)~~ System Installation Standards. (1) System layout standards.

(a) All systems shall be designed, laid out, and installed in the designated ~~flagged~~ area set aside for such purpose during the site evaluation. Installation of the system in any other area is prohibited. If the markers used to designate the system area cannot be identified, then the certified inspector or professional engineer who conducted the site evaluation shall be contacted. The certified inspector or professional engineer shall then revisit the property to reestablish the original designated area and confirm that the original designated area has not been altered. ~~Without the written consent of the local health department certified inspector.]~~

(b) Layout of the system on the site by the certified installer shall be accomplished by using suitable stakes or markers to locate excavation sites for system components, and shooting of surface grades to establish necessary excavation depths to assure proper elevation "fall" in the system. Lateral trenches or beds shall be laid out to follow parallel to the surface contour lines of the site.

(c) Maximum length for individual lateral trenches or beds for gravity distribution systems shall be no more than 200 ~~400~~ feet. Maximum length for individual lateral trenches in low pressure pipe (LPP) systems shall be seventy (70) feet.

(d) Individual lateral lines or beds receiving effluent from an equal flow distribution box shall be of equivalent size within ten (10) percent of the longest line or bed.

(e) Lateral trenches, and leaching chambers two (2) feet wide or less, for gravity distribution systems shall be spaced a minimum of eight (8) feet on centers. Lateral trenches for low pressure pipe (LPP) systems shall be spaced a minimum of five (5) feet on centers. Lateral beds, and ~~or~~ leaching chambers greater than two (2) feet wide, for gravity distribution systems shall be spaced a minimum of eight (8) feet from side wall to side wall. ~~Lateral trench~~ Spacing shall be increased two (2) feet ~~on centers~~ on all sites with slopes greater than fifteen (15) percent and up to and including ~~less than~~ twenty (20) percent. On slopes greater than twenty (20) percent, each five (5) percent increase in slope, or fraction thereof, shall require an additional spacing of two (2) feet ~~on centers~~ for lateral trenches.

(f) ~~(e)~~ Lateral line spacing in gravity distribution bed systems shall be as follows:

1. For beds of four (4) to six (6) feet in width, one (1) lateral line placed on the centerline of the bed is required;

2. For beds of seven (7) to ten (10) feet in width, two (2) lateral lines are required, spaced two and one-half (2 1/2) feet from the side walls;

3. For beds eleven (11) feet and wider, the two (2) laterals spaced two and one-half (2 1/2) feet from the side walls shall be used, and additional lateral lines installed five (5) feet on centers, or fraction thereof, from the side wall laterals.

(2) Excavation standards.

(a) Only ~~that heavy~~ equipment necessary to the installation of an on-site sewage disposal system shall be permitted in the design-



nated [flagged] area set aside for that system. Such equipment shall be operated so as to minimize travel over, and compaction of, the system area.

(b) Excavation of the lateral field, bed or other subsurface soil absorption system portion of the total system area shall be restricted by the soil moisture conditions of that portion of the area at the intended depth of excavation for all soil texture classes [listed in Soil Group IV. Such restriction shall apply for all system installations taking place during the months of November through May, or any time immediately after heavy rainfall occurs]. Soil moisture conditions shall be determined by test excavation to the intended depth of the lateral trenches or beds. A small portion of soil excavated from that depth shall be rolled between the thumb and fingers. If the soil can be rolled into a "wire" shaped form which does not easily crumble, the soil is too wet to work and will compact and seal absorption surfaces. If a "wire" form cannot be rolled and the soil crumbles, excavation can proceed.

(c) Excavation for septic tanks or other pretreatment units, distribution boxes, alternating valves or devices, and all nonperforated piping used to conduct effluent to other components through gravity flow means, shall be done only after shooting of grades to assure a positive gradient from the outlet of the pretreatment unit through all components to the distribution box(es) or device(s). Such determinations of grade shall take into account the intended excavation depth from grade of lateral trenches or beds.

(d) Excavations for placement of all components [except lateral trenches or beds] shall be made to the necessary depth for installation and shall be dug level in undisturbed earth. If filling is required to level or raise such components to the proper grade, except for lateral trenches or beds, tamped gravel, [or] sand, or compacted soil shall be used for such bedding purposes. When installation occurs in stony areas, large stones, flagstones, and [flags,] boulders, [etc.,] shall be removed from such component placement excavations to prevent component damage, and the cavities created by their removal shall be filled with tamped gravel, [or] sand, or compacted soil if they are located on the bottom surface of the excavation.

(e) Excavations for lateral trenches or beds shall be made to the depth specified by the [certified inspector based on] site evaluation results. Maximum trench or bed depth from grade for an [a conventional] on-site sewage treatment and dispersal [disposal] system shall be considered as being twenty-four (24) inches. Minimum trench or bed depth for modified gravity and dosed gravity distribution systems [using four (4) inch diameter lateral lines] shall be six (6) inches from grade. Minimum trench depth for low pressure pipe (LPP) systems shall be six (6) inches from grade. Trench width for low pressure pipe systems shall be a minimum of twelve (12) inches. Minimum trench width for gravelless pipe shall be eighteen (18) inches to a maximum of twenty-four (24) inches. Minimum or maximum trench width shall be as per manufacturer's specifications for leaching chambers; but in no instance shall the trench width exceed the chamber width by more than eight (8) inches.

(f) Lateral trench and bed bottom grades shall be as shown in Table 6 below:

Table 6 Maximum Grades for Trench and Bed Bottoms		
Distribution Method	Type	Maximum Grade inches/200 [400] feet
Hillside or drop box (also serial distribution)	Trench	[Level to] 2"
Equal Flow Box	Trench	[2" to] 4"
	Bed	Level to 1" in all directions from center
Gravelless Pipe	Trench	Level
Low Pressure Pipe	Trench	Level
	Bed (Mound)	Level
Leaching Chambers (using any of the above methods except low pressure) (using low pressure pipe)	Trench lay-out	[2" to] 4"
	Bed Layout	Level
	Trench	Level

(g) Excavations for curtain drains, [vertical drains] or vertical

[under] drains to intercept [and/or] lower groundwater tables shall be made to the depth determined by the site evaluation. Curtain drain excavations shall maintain the required depth in all parts upgrade from the lowest lateral line and then be graded to drain to the surface or to a pumped catchment basin. Vertical drain excavations shall encircle the entire soil absorption field area. Pretreatment units may be included within the curtain drained or vertical drained area. [certified inspector and graded to drain to the surface or to a pumped catchment basin.]

(h) Excavations for distribution leaders (nonperforated pipe) from the distribution box(es) on gravity distribution systems, shall be made so as to provide a "benched" distribution corridor above the trench or bed bottom. This "benched" corridor shall be bedded in undisturbed earth, and shall be excavated so as to provide a "bench" height of six (6) inches above the elevation(s) of the trench or bed bottoms. Benching of the distribution corridor shall be used to reduce the possibility of "short circuiting" of effluent and effluent ponding around distribution boxes.

(i) Excavation of evaporation [evapotranspiration]/absorption lagoons shall be made to provide uniformly-level lagoon bottoms and [done using a bulldozer or similar track type equipment to reduce compaction of the lagoon bottom. Lagoon bottoms shall be uniformly level and shall be constructed] to provide a [maximum] wastewater depth below the overflow outlet of four and one-half (4 1/2) feet, and a freeboard of two (2) feet. Containment berming, dikes, [or] dams, and liners shall [may] be of Group IV soil texture and installed so as to provide a minimum of eighteen (18) inch separation from the inside wall and bottom of the lagoon to rock and shall be [excavated materials, if sufficient clay content exists in the soil to prevent seepage between the berm and the original soil surface after compaction and are] "keyed" into the original soil at least one (1) foot deep and two (2) feet wide [beneath at least one (1) foot] at the base. Berms, dikes or dams shall be constructed on two (2) to one (1) (two (2) feet vertical to one (1) foot horizontal) slope. To prevent entrance by unauthorized persons, all lagoons shall be enclosed within a minimum six (6) foot high chain-link fence or equivalent open weave designed fence with a locked gate.

(j) Constructed wetlands cell bottoms shall be excavated uniformly level and prepared so that no coarse materials are exposed. Soil berming used for constructed wetlands shall be constructed so that the berming is stable and soil sloughing does not occur; the outside walls shall have a slope of one (1) foot vertical to three (3) feet horizontal; the inside walls shall have a minimum slope of one (1) foot vertical to two (2) feet horizontal. Vegetation shall be established on berming as soon as possible. [a three (3) to one (1) (three (3) feet vertical to one (1) foot horizontal) slope. All lagoons located in areas accessible to children or livestock shall be enclosed within a six (6) foot high chain-link fence or its equivalent with a locked gate.]

(3) Component installation standards.

(a) Septic tanks and other pretreatment units, dosing tanks and holding tanks shall be installed level and all connections to the unit which conduct sewage or effluent, and all unit joints or seams, are to be rendered watertight. Manufacturer's instructions on installation, and all connections to the unit (piping and/or electrical), shall be followed by the installer. Units showing structural damage on delivery, or damaged in placement shall be replaced with an undamaged unit. Patching of minor damage which does not affect the structural integrity, [or] watertightness, or function of the unit may be permitted under the supervision of the certified inspector.

(b) It shall be the certified installer's responsibility to provide access to [within twelve (12) inches of] finished grade above [to] the outlet end manhole on all septic tanks. Such access shall be provided through the use of suitable manhole risers of a minimum eighteen (18) inches internal dimension to allow removal of the tank manhole lid. Such manhole risers shall be provided with tamper-resistant lids or covers. Lids or covers of precast concrete, cast iron or steel shall be considered tamper-resistant if weighing sixty (60) pounds or more and require a vertical lift for removal. Lids or covers of sheet metal, plastic or fiberglass shall be attached by bolts or other suitable fastener requiring a tool for removal.

(c) An approved distribution device(s) shall be used in all gravity flow systems.

(d) Distribution boxes, and alternating valves or devices, shall be installed level, and all piping connections shall be rendered water-

tight. Such components showing structural damage on delivery, or damaged in placement shall be replaced with an undamaged component.

(e) ~~[(4)]~~ Equal flow distribution boxes shall be installed on a stable base to prevent settling. ~~[Tamped sand or gravel shall be sufficient for concrete boxes, but]~~ Plastic or fiberglass equal flow or level boxes shall be securely anchored to a poured concrete base a minimum of four (4) inches thick and extending on all sides of the box side walls at least four (4) inches. ~~[Rough leveling of the box may be done using a carpenter's level, however, final leveling shall be done by the "water leveling method" described below:]~~

~~[(f) [(4)]~~ Outlet ~~[leader]~~ piping of equal flow boxes shall be extended past the inside side wall of the box at least three-fourths (3/4) of an inch but no greater than one (1) inch to allow attachment of water leveling devices. ~~[plastic caps or plugs by solvent welding or cementing. Once attached, the water level is raised to the desired point on the caps or plugs, the level is marked on all caps or plugs, and a knife is used to cut out the upper portion of the cap or plug to the level marked.]~~

~~2. Additional water is carefully added while closely observing the water as it enters the outlets. If the outlets are properly leveled, all outlet lines will begin to receive water at the same level and time. If one or more lines are receiving water while others remain dry, adjustments to those higher outlets are necessary. Fine adjustment is then made by chaving down the cutouts on the caps or plugs until leveling is achieved.~~

~~3. Special leveling devices in the form of caps or inserts designed for this purpose shall be used where available. Other methods may be considered acceptable by the cabinet provided that they can be demonstrated to be of equal or superior performance to the above method.]~~

~~[(g) ~~[(e)]~~~~ Approved nonperforated ~~[plastic]~~ pipe shall be used as leader piping to connect outlets in the distribution box(es) to the perforated lateral lines in gravity distribution systems, and shall extend two (2) feet into all trenches or beds before connection to perforated lateral line. The leader piping excavation shall be manually filled with tightly-tamped soil.

~~[(h) ~~[(f)]~~~~ All leader piping connected to equal flow boxes shall be installed at no greater than one-eighth (1/8) inch per foot slope for the first five (5) feet of run from the box to restrict the flow velocity of effluent.

~~[(i) ~~[(g)]~~~~ Lateral lines for conventional gravity distribution trenches or beds shall be laid as follows:

1. A six (6) inch deep layer of approved trench rock or other fill material is carefully placed in the trench or bed to prevent sealing of absorption surfaces from fill impact, and leveled;

2. Lateral piping is placed and leveled on the trench fill material in the center of the trench (or properly spaced in beds), and retained in place to prevent movement, while additional trench fill material is added to a point two (2) inches above the top of the top of the lateral piping, for a total of twelve (12) inches of trench fill material;

3. Other methods of lateral piping and trench rock placement may be approved by the cabinet upon demonstration of equivalent compliance.

4. A ~~[two (2) to four (4) inch layer of approved barrier material, straw or a]~~ single layer of synthetic filter fabric, is then placed over the trench fill material to prevent entry of backfill soil fines.

~~[(j) ~~[(h)]~~~~ Lateral lines for low pressure pipe (LPP) systems shall be laid as follows:

1. At the beginning of each trench and at twenty (20) foot intervals thereafter, barrier walls of undisturbed earth or compacted earth fill at least one (1) foot thick shall be placed from side wall to side wall of the trench to the level to which lateral piping is to be installed;

2. Six (6) inches of pea gravel or approved alternate trench rock shall be placed in the trench and leveled;

3. Lateral piping is laid in place and assembled (may be preassembled), and leveled;

4. Trench earth barrier walls are completed to ground surface and additional pea gravel or other trench fill material is carefully placed over the laterals to a height of two (2) inches over the top of the piping;

5. Other methods of lateral piping and trench rock or pea gravel placement may be approved by the cabinet upon demonstration of equivalent compliance.

6. A ~~[one (1) to two (2) inch layer of approved barrier material, straw or a]~~ single layer of synthetic filter fabric, is then placed over the pea gravel to prevent entry of backfill soil fines.

~~[(k) ~~[(i)]~~~~ Lateral lines for gravelless pipe systems shall be installed as follows:

1. Remove plastic shipping and storage bags from pipe; do not remove filter wrap.

2. Lay out gravelless pipe with top stripe UP. Roll filter wrap back from ends of each section of pipe to allow proper connection of pipe sections and/or reducer connectors or end caps.

3. Join pipe sections together with approved connectors - make sure top stripes are in direct alignment on both sections to be joined, and tape joint with plastic tape supplied by pipe manufacturer to seal joint. Pull filter wrap ends back over joint and tape them together.

4. Fit offset reducer connectors (four (4) inches by eight (8) inches or four (4) inches by ten (10) inches) to inlet ends of joined pipe sections and locate four (4) inch inlet at top of pipe in alignment with top strips; tape joints to seal. Leave filter wrap loose at this time.

5. Fit end caps on other end of joined pipe sections, seal joints with tape, pull filter wrap over end joint and tape in place. ~~[Note: on systems for Group IV soils (clays) at least two (2) inspection ports per system must be provided at the end of selected lateral and brought to finished grade.]~~

6. Lay joined lateral pipe sections into trenches with top stripe directly UP. Connect solid smooth wall header piping from distribution box outlets to four (4) inch inlet on offset reducer connector (insert header pipe four (4) inches into connector) and seal joint with tape. Pull filter wrap over end of reducer cap and around four (4) inches header piping and tape in place.

~~[(l) Center and support each pipe section with handfilled soil. Installation of constructed wetland components shall be as follows:~~

~~1. Cell framing shall be structurally supported by spiking, mortaring, bolting, or other suitable means.~~

~~2. Liners shall be installed in all cells and shall be watertight after installation.~~

~~3. Manufactured liners shall be installed to conform to the shape of the cell with all wrinkles smoothed prior to the placement of fill material. The certified installer shall inspect the installed liner to insure that there are no holes or cuts in the liner. If the liner must be perforated to allow the inlet or outlet piping to pass through it, the liner shall be sealed watertight after the piping is installed. Liners shall be protected from sunlight before and after installation.~~

~~4. A clay liner may be installed in second cell applications for residential use only where naturally-occurring Group IV textured soil is present. The berming of the clay liner shall be keyed into the original soil by six (6) to twelve (12) inches. The clay liner shall be compacted.~~

~~5. Cell fill material shall be installed level and at a uniform depth ranging between twelve (12) and eighteen (18) inches based on the plant species selected.~~

~~6. The cell shall be constructed to provide a water depth equal to the cell fill material depth.~~

~~7. Two (2) inches of approved cover material shall be placed over the cell fill material.~~

~~8. Inlet and outlet headers shall be located at the bottom, center, or top of the fill material.~~

~~9. Inlet and outlet headers shall be located within one (1) foot from the cell end walls for gravity flow.~~

~~10. Inlet headers shall be located within three (3) feet from the cell end walls for pressure distribution.~~

~~11. If a header is located at an elevation that may cause siphoning of the effluent from a cell, suitable antisiphon methods shall be used.~~

~~12. If perforated horizontal header piping is used, the header pipe shall be installed level with the holes located one (1) inch from the pipe bottom at the same elevation.~~

~~13. If perforated horizontal inlet header piping is used, access to cover material grade shall be provided for clean out.~~

~~14. All headers shall be covered with two (2) to four (4) inches of approved cover material.~~

~~15. Water level control devices may be installed at the ends of the cells; the design of these devices shall comply with the construction standards of 902 KAR 10:081.~~

16. A minimum of two (2) access ports of at least four (4) inch diameter pipe shall be installed in each cell. At least one (1) access port shall be located one-third (1/3) of the distance from the inlet end wall to outlet end wall. At least one (1) access port shall be located within six (6) inches of the outlet header. If water level control devices are not used, then at least one (1) of the access ports in each cell shall be a minimum six (6) inch diameter. Access ports shall have holes located at the same depth as the cell fill material to allow the effluent to enter the access port. Access ports shall be equipped with removable lids or caps.

17. Plants shall be installed and spaced as required for the specific plant species. The permit holder shall be responsible for the installation of suitable wetland plants with hydrophilic plants preferred.

18. The overflow lateral field shall be installed as required for lateral trenches, beds, and components. Required vertical separation distances between overflow lateral trench or bed bottoms and any restrictive horizon, water table, or bedrock as determined by the site evaluation results shall be maintained.

(m) ~~(4)~~ Leaching chambers shall be installed according to manufacturer's specification; however, where such specifications are less restrictive or conflict with these administrative regulations, the administrative regulations shall take precedence, except that reduced backfill cover (no less than six (6) inches) over the leaching chamber may be permitted.

(n) ~~(4)~~ Installation of effluent piping to an evaporation ~~evapo-transpiration~~/absorption lagoon and overflow piping to the lateral field system shall be as follows:

1. Nonperforated gravity flow or pressurized piping is laid in an excavated trench into the lagoon and anchored to a poured concrete, three (3) foot square, four (4) inch thick apron. The inlet shall be a tee laid on its side.

2. Overflow piping consists of a supported, vertically oriented tee connected to a nonperforated gravity flow plastic pipe which conducts overflow to the distribution box(es) of the lateral field. The overflow should be located at a point within the lagoon that is the furthest distance from the inlet apron. The upper leg of the tee shall be screened and the lower leg extended downward to within three and one-half (3 1/2) feet of the lagoon bottom.

3. All submerged piping into and out of a lagoon shall be provided with suitable water stops or leak collars with a minimum extension of twelve (12) inches on all sides of the pipe.

(4) Curtain drain and ~~vertical drain~~ ~~underdrain~~ installation standards.

(a) Curtain drains and vertical drains ~~underdrains~~ shall be installed according to the following procedures:

1. After excavation and grading of drain trenches to the required depth, slotted ~~(by backhoe or trencher) the perforated~~ plastic drainage pipe with slots around the entire pipe circumference shall ~~may~~ be laid in the trench. ~~(Depending on trench width and depth it may be necessary to bed)~~ The pipe shall be bedded in two (2) to four (4) inches of leveled trench rock fill material ~~(in small gravel or pea gravel to provide lateral and vertical support to pipe side walls to prevent collapse of the pipe)~~.

2. After bedding and grading the pipe to drain, approved ~~regular~~ trench rock fill material (for trenches twelve (12) inches or wider) or pea gravel (for trenches narrower than twelve (12) inches) shall be added to the trench to a point four (4) inches from grade.

3. Suitable barrier material as used in lateral trenches shall be placed over the drain trench fill material.

(b) Vertical drains may be used when more permeable soil horizons exist below a restrictive horizon, and shall be installed according to the following procedures:

1. After excavation of the drain trenches to the required depth the trenches are filled with crushed rock or pea gravel as in curtain drains above, to the points listed in paragraph (a)2 of this subsection, as applicable. Drainage piping is unnecessary in vertical drains since drainage is encouraged downward through the restrictive horizon to more permeable soils.

2. Suitable barrier material as used in lateral trenches shall be placed over the drain trench fill material.

(5) Filling, backfilling and finish grading standards.

(a) On sites requiring the placement of fill soil before any on-site sewage disposal system can be installed, the following requirements

shall apply:

1. Surface vegetation shall be removed and the original soil surface layer shall be tilled to a depth of two (2) inches prior to placement of fill.

2. Soil fill material shall meet or exceed the textural class characteristics of Soil Group III outlined in Section 4(4)(a) of this administrative regulation and shall not be obtained from a restrictive horizon.

3. Soil fill material shall be placed in the area to be filled by methods acceptable to the cabinet, to prevent stratification and unnecessary compaction.

4. Soil fill shall be protected by establishing a fast growing ground cover and allowed to settle for a period of one (1) year and be reevaluated before system installation can proceed.

5. Depth of soil fill required shall be determined by the site evaluation ~~(local health department)~~ on a case-by-case basis, based upon minimum separation distances between lateral trench bottoms and restrictive horizons, bedrock, or water tables.

(b) Backfilling around and over septic tanks and other pretreatment units, dosing tanks, holding tanks, distribution boxes, low pressure pipe manifolds, alternating valves and devices and nonperforated effluent piping and distribution leader piping, shall be accomplished by filling and tamping by layers. While the filling and tamping process is being carried out, care shall be taken to prevent shifting, tilting, misalignment or damage of system components or damage to watertight joints, seams or connections. The location of all such components shall be clearly marked by staking or flagging after backfilling and prior to final grading.

(c) When manufacturer's installation instructions require specific backfilling procedures to protect component warranties, prevent damage, or prevent flotation of the component due to ground water pressure, those procedures shall be followed. Soil for backfilling gravelless pipe trenches shall be loose and friable. Soil aggregates (clods or clumps) shall be no larger than one-half (1/2) inch in any dimension for backfill in contact with the pipe and filter wrap to assure proper operation. Use of large clods or clumps of soil for backfill is prohibited. If soil excavated from trenches will not meet this criteria, suitable backfill soil shall be obtained elsewhere.

(d) Backfilling of lateral trenches or drainage trenches shall be accomplished with minimal compaction of soil fill, and soil fill material shall be left mounded four (4) to six (6) inches above grade over trenches to allow for settling. Backfilling over lateral beds shall be accomplished through the use of lightweight wheeled or crawler type tractors to minimize compaction, and shall be left mounded four (4) to six (6) inches above grade to allow for settling.

(e) Backfilling shall not be done until after the system has been inspected and approved to that point of construction by a certified inspector.

(f) On sites where additional fill soil is required over the lateral field due to shallow depth of installation, the following procedures shall apply:

1. The requirements of paragraph (a)1 through 3 of this subsection;

2. Fill shall be extended on all sides of the lateral field to a minimum distance of ten (10) feet, except on sloping sites where the fill on each end of the system shall expand outward to a minimum of fifteen (15) feet at the lowest point downslope, and the fill at the downslope side of the system shall be increased to a minimum of fifteen (15) feet beyond the system;

3. Minimum depth of fill shall be as required by the site evaluation ~~(certified inspector)~~, but may not be less than ten (10) inches of settled soil over the trench rock fill material, or top of the gravelless pipe (for leaching chambers six (6) inches minimum) and that depth shall extend over the entire lateral field to a point at least two (2) feet beyond the sidewall of any trench, bed or chamber, at which point the remainder of the fill may be tapered to original grade out to the minimum distances specified in subparagraph 2 of this paragraph.

(g) Finish grading over the on-site sewage system shall be performed in such a manner as to minimize compaction through the use of lightweight equipment. Such grading shall be restricted to work necessary to provide positive surface drainage away from the system, especially the lateral field. Final grading over staked or flagged system components shall be accomplished manually, or with lightweight equipment using extreme care to prevent damage to or mis-

alignment of components.

(h) Finish grading work which removes soil from the system area, or which results in that area being used to dispose of excess soil graded from other areas on the site, shall be prohibited.

(i) Finish grading on other areas of the site shall be done in such a manner as to divert surface water run-off from driveways, patios, downspouts, slopes, ditches, gullies, etc., away from the area where the system is installed. When site conditions are such that normal grading procedures cannot divert all such run-off, diversion ditches,

swales, berms, or other such diversion drainage means shall be constructed to divert run-off away from the system.

Section 8. [40.] System Setback Restrictions. (1) Minimum setback distances shall be required for installation of on-site sewage disposal systems from structures, water supplies, roads, streams, bodies of water, and other structural or topographic features, as listed in Table 7 below:

Structure or Topographic Feature	Minimum Distance (Ft.) from Pretreatment Unit Constructed Wetland Cell, [for Holding Tank]	Minimum Distance (Ft.) from Side wall of Lateral Trench, Bed, or Lagoon
	5	5 (50 for lagoons)
Property lines	10	10
Building foundations	20 [40]	20
Basements	20	30 (5-15% Slope) 40 (15-25% Slope) 50 (25% and Higher)
Basements (Downslope from system)	20	70
Wells	50	20
Wells (Properly plugged/abandoned)	20	70
Cisterns	50	10
Cisterns (Upslope from system with bottom at higher elevation than system)	10	50
Natural Lakes or Impoundments (Shoreline)	25	25
Streams	25	50
Springs (Upslope from system)	25	20
(Upslope with curtain interceptor drain)	10	70
(Downslope from system)	50	25
Drainage Ditches, [Road] Cutbanks (Downslope)	10	40
[Underdrain system]	40	10
Curtain or vertical drain (Upslope and Sides) (Downslope)	10	70
Sinkhole Throat (Open)	25	50
[Sinkholes (Rim)]	50	10
Buried Water Lines or Utility Lines	10	10
Utility Easements	10	5
Driveways, parking lots, or paved areas	10	70
Geothermal Vertical	50	10 (upslope and sides)
Geothermal Horizontal (Downslope)	10	25
Inground swimming pools	10	20
Mine Openings and Air Shafts	50	70
Livestock pens, feed lots, corrals, etc.	10	10

(2) Lagoon setback distances shall be measured from the inside berm wall at a point four and one-half (4.5) feet vertically from the lagoon bottom.

Section 9. [44.] System Installation Inspection. (1) All on-site sewage disposal systems installed, constructed, altered or repaired shall be inspected by a certified inspector.

(2) The inspection sequence performed shall be as follows:

(a) The certified installer shall complete an installer's affidavit for all systems except subsurface flow constructed wetland systems, recording all grade shot readings of all excavation work certifying by his signature that such work has been performed in compliance with the administrative regulation. In lieu of the installer's affidavit, the certified installer may request an initial inspection be performed by a certified inspector. An initial inspection shall consist of shooting of grades in all excavations to determine compliance with this administrative regulation.

(b) For subsurface flow constructed wetland systems, an initial inspection shall be made by a certified inspector to determine compliance with excavation standards.

1. An installer's affidavit in lieu of the initial inspection shall not be accepted.

2. The liner shall be in place in the cell prior to the initial inspection unless special cell preparation is needed prior to placement of the liner.

3. All components and the overflow lateral field shall be inspected as required by this administrative regulation.

(c) An installation inspection shall be conducted by the certified inspector prior to backfilling of the system. The certified installer shall be responsible for requesting this inspection at the discretion of the certified inspector. To facilitate inspection of lateral fields and constructed wetland system cells, the certified installer shall provide direct access to trench, bed, or cell [or bed] bottoms to allow accurate shooting of grade and elevation. Such direct access shall be provided through the use of ports, piping, or other methods acceptable to the certified inspector, and at such locations within the lateral field as deemed necessary.

(d) [45.] The installation inspection shall consist of examination of the following: system components, including constructed wetland systems plants, as to type, size or capacity, approved status, materials, connections; installation as to proper placement, proper grade or level; conduct "water leveling" method on equal flow distribution boxes; testing of dosing devices, low pressure systems and alarm systems; shooting of trench, bed, constructed wetland cell, or lagoon bottom grade and elevation, installation of lateral lines, trench and constructed wetland cell fill material depth, trench barrier material,

constructed wetland cell cover material depth and placement, water depth; and other necessary examinations and checks to determine compliance with this administrative regulation relative to all site and system modifications required.

(e) A constructed wetland system shall not be approved before it is 100 percent complete including plant installation.

(f) ~~(4d)~~ Systems meeting approval shall be backfilled in accordance with this administrative regulation, and it shall be the certified installer's responsibility to assure proper backfilling. Once backfilling is completed, it shall be the certified installer's responsibility to perform or supervise finish grading. Where additional fill soil over the system is required, once finish grading is completed, the certified installer shall request a final inspection. It shall then be the owner's responsibility to protect the system from damage, disruption, or unnecessary surface water drainage during subsequent occupancy and system usage.

(g) ~~(e)~~ Systems not meeting approval shall be reconstructed as needed to meet compliance.

Section 10. ~~[42]~~ Responsibilities. (1) The construction, operation, and maintenance of on-site sewage disposal systems, whether conventional, modified, or alternative systems, shall be the responsibility of the owner, developer, certified installer, or user of the system as applicable in the circumstances.

(2) Actions of the cabinet and certified inspectors, engaged in the evaluation and determination of measures required to effect compliance with the provisions of this administrative regulation shall in no way be taken as a guarantee that on-site sewage disposal systems approved and permitted will function in a satisfactory manner for any given period of time, or that such agents or employees assume any liability for damages, consequential or direct which are caused, or which may be caused, by a malfunction of such systems.

Section 11. ~~[43]~~ Prohibited Practices. ~~(4)~~ Certain practices shall be prohibited, and their use shall result in immediate voiding of permits and/or site evaluations as applicable, and are as follows:

(1) ~~(a)~~ Use of unapproved system components in lieu of replacement with approved components;

(2) ~~(b)~~ Except as provided in Section 13 ~~[45]~~ of this administrative regulation, use of seepage pits, cesspools, and dry wells;

(3) ~~(c)~~ Use of improperly constructed or designed systems, in lieu of redesign and/or reconstruction;

(4) ~~(d)~~ Placement of lateral field within less than twelve (12) inches of, or below, the upper limits of a restrictive horizon or water table;

(5) ~~(e)~~ Placement of lateral field within less than twelve (12) inches of, or into bedrock. Dynamiting, ripping, or otherwise removing bedrock to install a lateral field is expressly prohibited;

(6) ~~(f)~~ Cutting, filling, or otherwise altering the original grade and/or soil characteristics of the area upon a site staked or flagged off for system installation, except when such work is a requirement of these administrative regulations;

(7) ~~(g)~~ Allowing any use of the area staked or flagged off for system installation as a material or soil stockpile, vehicle or heavy equipment parking area or roadway, or any other unauthorized use which may damage or alter the soil or site characteristics;

(8) ~~(h)~~ Construction of evapotranspiration lagoons in Group I, Group II, or Group III textured soil;

(9) ~~(i)~~ Discharge of water softener brine into on-site wastewater disposal systems.

Section 12. ~~[44]~~ Variances. (1) Any person owning a site where an on-site sewage disposal system is proposed to be installed may request, in writing, to the local board of health, or their designated agent ~~(agents)~~, consideration for the granting of a variance to specific portions of this administrative regulation.

(2) Written requests shall include all pertinent information about the site, the specific portion(s) of the administrative regulation requested to be waived, the specific reasons for the request, and documented evidence justifying the granting of the variance.

(3) Such requests shall be acted upon as soon as practicable by the local board of health, or their designated agent ~~(agents)~~, and a written decision, either denying the variance with reasons for denial, or granting the variance with or without stipulations or restrictions,

shall be presented to the person so applying within five (5) working days of the decision.

(4) Persons requesting variances shall have the right to appear in person with counsel and/or expert professional witnesses before the local board of health, or their designated agent ~~(agents)~~, either to present the request, or to appeal a variance decision.

(5) If such a hearing is requested, the local board of health, or their designated agent ~~(agents)~~, shall set a date and time for the hearing, as soon as practicable, and shall so notify in writing the person requesting same of such date and time. Notification shall be made within five (5) working days of receipt of the request and at least two (2) days prior to the date of the hearing.

(6) Decisions on the granting or denial of variances shall be based upon the evidence presented by the requestee; the evidence presented by the certified inspector(s) involved with the site in question; as well as supportive evidence for either side presented by expert professional witnesses.

(7) Decisions shall be influenced by the requirements of the On-site Sewage Systems Law and these administrative regulations, and by the presence or absence of reasonable assurances, derived from evidence presented, that the granting of such variance will not result in the creation of groundwater contamination or the surfacing of effluent, and creation of a health hazard or public health nuisance.

(8) Variances shall not be granted for the following purposes:

(a) Waiver of site evaluations or system inspections;

(b) Reduction of required system size when modified or alternative systems can be used to provide an equivalent system in the available area on the site;

(c) In any instance where site and/or system modifications or alternative systems can overcome site limitations;

(d) Prohibited practices as listed in Section 11 of this administrative regulation.

(9) Variances granted ~~(which may have a direct effect upon the future use or marketability of a site or subdivided parcels of that site)~~ shall be made a permanent record, and filed at the local health department in the county where the site is located.

(10) Variance requests shall be acted upon and a final decision made by the local board of health or their designated agent prior to the issuance of a permit to install the proposed on-site sewage disposal system.

Section 13. ~~[45]~~ Exemption. (1) On-site sewage systems shall be governed by the provisions of KRS 211.355(3) and this section.

(2) The repair or alteration of an on-site sewage treatment system shall be permitted if:

(a) A municipal or public sewage treatment system is not available; and

(b) Repair or alteration is required because of:

1. Malfunction; ~~(or)~~

2. Damage; or

3. Upgrade.

(3) In the repair or alteration of an on-site sewage system utilizing a seepage pit, an owner shall be permitted to:

(a) Clean;

(b) Service; and

(c) Repair, alter, reconstruct, or replace:

1. Any system component leading to a pit, such as pipes and septic tanks;

2. Pit rings; or

3. Any other component repair which would not require the drilling of a new pit.

(4) If a municipal or public sewage treatment system is not available, a seepage pit may be installed as an on-site sewage disposal system in the development of a vacant lot, purchased on or before May 1, 1992, if bona fide construction begins within six (6) months from the effective date of this administrative regulation. This subsection shall apply only to single family dwellings.

NICHOLAS Z. KAFGLIS, M.D., Chairman

RICE C. LEACH, M.D., Commissioner

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: May 3, 2002

FILED WITH LRC: May 3, 2002 at 11 a.m.



REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Samuel J. Burnette, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes additional options and standards for evaluation, construction, and installation of onsite sewage disposal systems for residential and commercial establishments.

(b) The necessity of this administrative regulation: Establishes additional options and standards for evaluation construction and installation of onsite sewage disposal systems for residential and commercial establishments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211:350 to KRS 211:380

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Establishes additional options and standards for evaluation, construction, and installation of onsite sewage disposal systems for residential and commercial establishments.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Provide clarification of wording and methodology; provide additional sewage treatment options; reflect changes in applicable standards and update the code to reflect changes in technology and conformance to statutory changes.

(b) The necessity of the amendment to this administrative regulation: Establishes additional options and standards for evaluation, construction, and installation of onsite sewage disposal systems for residential and commercial establishments.

(c) How the amendment conforms to the content of the authorizing statutes: Provides additional onsite sewage disposal system options.

(d) How the amendment will assist in the effective administration of the statutes: Establishes additional options and standards for evaluation, construction, and installation of onsite sewage disposal systems for residential and commercial establishments.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Homeowners, business owners 120 local health departments.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Establishes additional options and standards for evaluation, construction, and installation of onsite sewage disposal systems for residential and commercial establishments.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially:

(b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Installation permit fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

local government or only a part or division of the local government. This regulation affects the general sanitation program carried out by local departments statewide.

3. State the aspect or service of local government to which this administrative regulation relates. Surveillance, fee collection, record keeping, compliance, construction plan review, enforcement and publicity for the general sanitation programs.

4. How does this administrative regulation affect the local government or any service it provides. Establishes administration and enforcement procedures.

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



PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MAY 15, 2002

PUBLIC PROTECTION AND REGULATION CABINET  
Board of Claims  
(Amendment)

108 KAR 1:010. Board operation and claim procedure.

RELATES TO: KRS 44.070, 44.080, 44.086, 44.090  
STATUTORY AUTHORITY: KRS 44.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 44.080 requires the Board of Claims to establish rules for its government and for the regulation of the method of pleading and practice before it. The purpose of this administrative regulation is to establish rules for procedures for claims and rules for operation of the board.

Section 1. Meetings. (1) In addition to conducting regular sessions in January, May, and September, the board shall conduct special sessions in each month that it does not meet for a regular session on a date to be fixed by the board if necessary to expedite the business of the board. Additional meetings of the board may be called by the chairman or a majority of the board at such times and places as the call directs.

(2) Three (3) members of the board shall constitute a quorum.

(3) The Executive Director of the Board of Claims or designee of the executive director shall serve as secretary to the board and shall have authority to order the submission of briefs, assign claims to a hearing officer, notify parties of the time and place of [set] hearings, and issue such other orders as the board may direct.

Section 2. Filing of Claims; Response to Claims. (1) Claims shall be legibly written, typed or printed and mailed or delivered to the Board of Claims office in Frankfort, Kentucky and allege negligence on the part of the Commonwealth that would survive a motion to dismiss.

(2) Each claim shall contain the name and address of the claimant, the amount he is claiming and a statement of facts that allege negligence on the part of the Commonwealth that would survive a motion to dismiss or otherwise is sufficiently clear to show that the claimant is entitled to relief under the provisions of KRS 44.070 to 44.165, and [to] enable the defendant to investigate the claim and prepare its defense.

(3) Claims may be filed by the claimant or by an attorney [or legal representative] acting in the claimant's behalf. A claimant who is the court appointed legal representative of an individual who is either deceased, an infant, of unsound mind, or under any other legal disability preventing the claimant from acting on his or her own behalf shall be represented by an attorney.

(4) An attorney who commences with representation of a claimant before the board shall enter an appearance into the record of the claim for purposes of service of process, including any orders relative to the claim. The original entry of appearance shall be filed with the board and copies served on the opposing party and the hearing officer presiding over the claim.

(5) The executive director or designee of the executive director [the board's secretary] shall promptly furnish a copy of each claim to the head of the affected agency.

(6) The agency against which a claim has been filed shall answer the charges in writing to the board and to the claimant within thirty (30) days. [(45)] All claims that do not require a hearing pursuant to KRS 44.086(3) [under \$1,000] shall be investigated by the administrative staff of the board. Within thirty (30) days from the date the answer is due from the agency, [forty-five (45) days from the date receipt of claim is acknowledged to the claimant,] the board or board member shall, if the claim does not require a hearing pursuant to KRS 44.086(3) [is for less than \$500], issue findings of fact, and an opinion and order either awarding or denying the claim and shall report to all parties its findings as to negligence. Any aggrieved party in a claim not requiring a hearing may, pursuant to KRS 44.086(6), request that the full board review the claim along with all documents, papers, and exhibits filed with the claim or submitted thereafter, the answer filed by the affected agency, any other evidence gathered, and render a final order in the matter.

(7) All claims requiring a hearing pursuant to KRS 44.086(3) [if the claim is for between \$500 and \$1,000, the staff, upon completion of its investigation, shall report to all parties its findings as to negligence. Any party who is aggrieved by these findings may request a hearing within thirty (30) days, and if requested, such hearing shall be set by the secretary of the board. If no hearing is requested, the board, upon expiration of the thirty (30) day period, will enter its final order in the matter.

(6) All claims over \$1,000] shall be investigated by the agency concerned and, within thirty (30) days, the agency shall answer the charges in writing to the board and to the claimant.

(8) [(7)] If the Attorney General wishes to enter the matter, he shall file such response as he desires with the board.

(9) [(8)] If the response filed by the affected agency admits liability, the executive director or designee of the executive director [secretary] shall submit the matter to the board at its next regularly-scheduled regular or special monthly meeting [an early meeting].

(10) [(9)] If the affected agency fails to respond to the board concerning its investigation within thirty (30) days, the executive director or designee of the executive director [the secretary] shall submit the matter to the board at its next regularly-scheduled regular or special monthly meeting [an early meeting].

(11) [(10)] If the response filed by the affected agency denies negligence in a claim requiring a hearing pursuant to KRS 44.086(3) [whose value is \$1,000 or greater], the executive director or designee of the executive director shall assign the claim to [secretary shall set a hearing before] a hearing officer and shall notify the claimant and the head of the affected agency (or their attorneys) of the assignment [the time and place of the hearing].

(12) An extension of time to file the answer or otherwise file a response to the claim may be granted on agreement of the parties, or if no agreement between the parties, then upon a showing of good cause.

Section 3. Prehearing or Status Conference - Hearings - and Recommended Orders. (1) Within sixty (60) days of the assignment of a claim to a hearing officer to conduct a hearing, the hearing officer shall schedule a telephonic prehearing or status conference upon reasonable notice to all parties if no prior prehearing or status conference has been conducted in the claim and a prehearing, status, or scheduling order was not issued. The hearing officer shall convene the telephonic prehearing or status conference, or order the affected state agency to convene the conference, and conduct the conference to explore jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, and other matters that will promote the orderly and prompt conduct of the hearing. The hearing officer and the parties shall set an agreed date for the hearing at the prehearing or status conference, unless a prehearing or status conference had already taken place and a prehearing, status, or scheduling order setting the hearing was previously issued in the claim. Upon conclusion of a prehearing or status conference, the hearing officer shall issue a prehearing or status conference order incorporating all matters determined at the prehearing or status conference. Upon the agreement of the parties and the hearing officer on the date and time that the hearing will be conducted, the hearing officer shall notify the executive director or the designee of the executive director who shall then reserve a place within the proper venue to conduct the hearing, select a court reporter to be present at the hearing to record the proceedings, and notify the parties and the court reporter of the date, time, and place of the hearing. If the hearing officer and parties cannot agree upon a date on which to conduct the hearing, then the hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference, unless the parties have otherwise agreed to have the board hold the claim in abeyance.

(2) The board and hearing officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, motions, objections, and offers of settlement. The board and hearing officer, at appropriate stages of the proceedings, may give all parties full opportunity to file briefs, proposed findings of fact and conclu-

sions of law, and proposed recommended or final orders. An extension of time to file pleadings, motions, briefs, proposed findings of fact and conclusions of law may be granted on agreement of the parties, or if no agreement between the parties, then upon a showing of good cause. The hearing officers and board shall render an order on a motion filed by the parties to the claim no later than sixty (60) days from the date a response to the motion is filed, if any, unless a reply is to be filed. A response, if any, to a motion shall be due within thirty (30) days of the filing of the motion. If no response to the motion is filed, then the sixty (60) day deadline for the issuance of the board's order shall be calculated from the date a response is due. A reply, if any, shall be due within ten (10) days of the filing of a response, if any. If a reply is filed, then the sixty (60) day deadline for the issuance of the board's order shall be calculated from the date the reply is filed. The original of all filings shall be mailed to the board, and copies of any filed item shall be served on all parties and the hearing officer by mail or personal service by the party filing the item.

(3) Any party requesting that the board issue a subpoena, pursuant to KRS 44.080, shall notify the board and request the issuance of the subpoena and it shall be served by the party through either the county sheriff in the county where the witness can be found, by certified mail, return receipt requested, or by personal service. A copy of the subpoena that reflects actual service shall be filed with the board and the hearing officer to whom the claim is assigned.

(4) Any party shall have the right to inspect, at least five (5) days prior to the hearing, a list of all witnesses each party expects to call at the hearing, and the available documentary or tangible evidence relating to the hearing, either in person or by counsel. The hearing officer may order the provision of the lists of witnesses and documents in the prehearing or status conference order rendered subsequent to the conference.

(5) ~~(Section 3. Hearings. (1))~~ Hearings shall be open to the public. The proceedings of hearings shall be recorded by a court reporter ~~(taken by a stenographer)~~. The hearing officer shall cause the hearing to be conducted with decorum. The hearing officer shall preside over the conduct of the hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing. The hearing officer shall regulate the hearing in conformity with the prehearing or status conference order.

(6) ~~(2)~~ The proof required to support a claim shall be that required to support a claim in any court of competent jurisdiction in this Commonwealth.

(7) ~~(3)~~ All testimony and proof shall be presented at the hearing before the hearing officer by all parties; however, the board, on oral motion at the hearing or on written motion thereafter, shall permit further proof within ~~(during)~~ thirty (30) days following the hearing.

(8) All testimony shall be made under oath or affirmation. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party and shall be noted and made a part of the record.

(9) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(10) ~~(4)~~ Any claimant desiring to submit medical or other expert testimony shall be granted thirty (30) days after the hearing to do so and the defendant shall be granted forty-five (45) days thereafter to complete its proof. For good cause, these times may be extended by the board.

(11) The hearing officer may take official notice of facts, which are not in dispute, or of generally-recognized technical or scientific facts within the affected state agency's specialized knowledge. The hearing officer shall notify all parties, either before or during the hearing, or in preliminary reports or otherwise, of any facts so noticed and their source. All parties shall be given an opportunity to contest facts officially noticed.

(12) ~~(5)~~ If the claimant fails to appear at a scheduled hearing, prehearing or status conference, or any other proceeding, of which he has notice, the hearing officer presiding over the claim shall issue an order for the claimant to show good cause for the failure to appear at the hearing within ten (10) days from the date of the show cause order. If the claimant fails to respond or show good cause for the failure to appear at the hearing, the board may order the claim

dismissed. ~~(and fails to file with the board within five (5) days following the hearing a written statement that the board determines indicates good cause for his failure to appear, the board may order the claim dismissed.)~~ If the affected state agency fails to appear at the hearing, the hearing officer in his discretion may take the testimony of any witnesses present.

(13) Findings of fact shall be based exclusively on the evidence on the record. The hearing officer shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this Commonwealth. Hearsay evidence may be admissible, if it is the type of evidence that reasonable and prudent persons would rely on in their daily affairs, but it shall not be sufficient in itself to support the recommended findings of facts of the hearing officer or the final order of the board, unless it would be admissible over objections in civil actions.

(14) A hearing officer acting at the direction of the board shall not communicate off the record with any party to the hearing regarding any issue that is a part of a matter assigned to the hearing officer to consider and submit a recommended order to the board.

(15) ~~(6)~~ After completion of the hearing ~~(of proof and submission of the case for decision)~~, the claimant may ~~(shall)~~ have thirty (30) days to submit its brief, ~~(i)~~ the defendant thirty (30) days thereafter its response brief, and the claimant five (5) days for rebuttal prior to submission of the case for a decision. The hearing officer may order briefs filed simultaneously by each party within thirty (30) days from the submission of the case for decision and five (5) days for rebuttal. If a transcript of the hearing is necessary to complete a brief, then the parties and the hearing officer shall stipulate to the commencement of the time periods within which to file any brief. If the parties do not desire to submit briefs ~~(or should the board not desire that briefs be submitted)~~, this fact should be made known at the hearing.

(16) ~~(7)~~ The hearing officer shall furnish recommended findings of fact, conclusions of law and order to the board within thirty (30) days after the record is completed or a longer period upon agreement of the parties involved. If the parties do not agree to permit the hearing officer an extension of time within which to complete and submit a recommendation to the board and an extension is needed, the hearing officer shall show good cause to the board based upon substantial proof that an extension of time is needed, and state the period of time requested to complete and submit the recommendation, in writing. An order by the board granting an extension, if so granted, shall be served on the parties and included in the record of the hearing. The hearing officer shall submit the original of the recommended order to the board.

(17) The board shall send a copy of the hearing officer's recommended order to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the board. The board shall transmit a copy of the recommendation by regular mail to the last known address of each party. An extension of time to file exceptions may be granted on agreement of the parties, or if no agreement between the parties, then upon a showing of good cause.

Section 4. Board Decision. (1) Each claim shall be submitted to the board at its next regularly-scheduled regular or special monthly meeting ~~(an early meeting)~~ following the submission of the hearing officer's recommended findings of fact, conclusions of law and order. The board shall render a final order within thirty (30) days after the hearing officer submits a recommended order to the board, except in cases involving large or complicated records or unusual questions of law, and shall be made within ninety (90) days after final submission in any event. If the board remands the claim to the hearing officer, the hearing officer shall have no longer than thirty (30) days to render a recommendation to the board, unless an extension of time is required by further proceedings at the request of the hearing officer or the parties to the proceeding. The stated deadlines within which the board shall render a final order shall commence upon the last filing of any exceptions to the recommendation.

(2) The board, or a majority of its members, shall render a decision on each claim requiring a hearing pursuant to KRS 44.086(3) or subject to full board review at a board meeting.

(3) In rendering the final order, the board shall consider the record including the recommended order and any exceptions duly filed to a recommended order.

(4) The board may accept the recommended order of the hearing officer and adopt it as the final order of the board, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(5) If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law.

(6) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record. The final order shall also include the date the board rendered the order, the date it was served on the parties, and to whom it was served, along with a statement advising parties fully of available appeal rights.

(7) Regardless of the amount of any claim the matter shall be deemed finally adjudicated if the claim has been the subject of full board review.

Section 5. Exchange of Facts by Parties to Contested Claims. All discovery procedures as outlined in the Kentucky Rules of Civil Procedure are applicable to proceedings before the board. Any party may request admissions of fact. If a party fails to admit a requested fact which is later established, that party shall be responsible for all costs necessary to establishing the fact. The parties are encouraged to stipulate the facts whenever possible.

LINDA F. FRANK, Executive Director

JANIE A. MILLER, Secretary

APPROVED BY AGENCY: May 14, 2002

FILED WITH LRC: May 14, 2002 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation amendment shall be held on June 25, 2002, at 10 a.m., at the Board of Claims (large conference room), 130 Brighton Park Boulevard, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by June 18, 2002, 5 business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by June 18, 2002, the hearing will be cancelled. This hearing is open to the public. Any person who wishes to be heard will be provided an opportunity to comment on the proposed administrative regulation amendment. 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 to be borne by the requesting party. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person.

Contact person: G. Mitchell Mattingly, Attorney, Board of Claims, Public Protection and Regulation Cabinet, 130 Brighton Park Boulevard, Frankfort, Kentucky 40601, (502) 573-7986, Fax (502) 573-4817.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: G. Mitchell Mattingly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rules for the operation of the board, for processing claims, and pleading and practice before the board and its hearing officers.

(b) The necessity of this administrative regulation: KRS 44.080 requires the Board of Claims to establish rules for its government and for the regulation of the method of pleading and practice before it.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The provisions of the regulation as they currently exist and as they will be amended provide specific notice to the public and to the members of the Kentucky Bar Association of the pleading and practice rules utilized by the board and sets forth

guidelines on the timing of certain procedures and the filing of certain pleadings, motions, and briefs.

(d) This administrative regulation currently assists or will assist in the effective administration of the statutes: The changes to the regulation will provide notice to the public and the Kentucky Bar Association of the board's and the claimant's responsibilities in the processing of their claim. The regulation as amended also provides certain deadlines on when certain procedures and documents are to be filed and attempts to eliminate the potential for dilatory practices.

(2) If this is an amendment to an existing regulation, provide a brief summary of:

(a) How the amendment will change this existing regulation: By implementing more specific procedures and practices.

(b) Necessity of the amendment to this administrative regulation: The changes are necessary to enable the board, hearing officers, claimants, and their attorneys to better realize what is expected of all parties involved and potentially expedite the adjudication of claims.

(c) How this amendment conforms to the content of the authorizing statutes: The provisions of the regulation as they currently exist and as they will be amended provide specific notice to the public and to the members of the Kentucky Bar Association of the pleading and practice rules utilized by the board and sets forth guidelines on the timing of certain procedures and the filing of certain pleadings, motions, and briefs.

(d) How this amendment will assist in the effective administration of the statutes: The changes to the regulation will provide notice to the public and the Kentucky Bar Association of the board's and the claimant's responsibilities in the processing of their claim. The regulation as amended also provides certain deadlines on when certain procedures and documents are to be filed and attempts to eliminate the potential for dilatory practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any citizen who files a claim and alleges suffering damages caused by the negligence of the Commonwealth or its employees acting in their official capacities as state employees performing ministerial duties are and will be affected by this regulation as are members of the Kentucky Bar who practice before the board, along with the state agencies who defend those claims.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: In terms of impacting the substance of the result of claims filed with the board this amendment will have no impact but it should expedite the adjudication of those claims. Claimants, attorneys, and newer hearing officers will be beneficially impacted by this amended regulation by having some basis upon which to handle those claims and proceed with them.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No significant initial costs are expected through implementation of this regulation.

(b) On a continuing basis: No continuing costs are expected.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: As is currently, the sources of funding for this regulation are the general fund, the state road fund, agency funds, and attorney fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering does not apply. All the claims that are \$1,000 or greater are treated the same procedurally as are those claimants whose claims amount to a value less than \$1,000.

KENTUCKY BOARD OF OPTOMETRIC EXAMINERS  
(Amendment)

201 KAR 5:030. Annual courses of study required.

RELATES TO: KRS 320.280  
STATUTORY AUTHORITY: KRS 320.240(7), 320.280(2)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.280(2) requires all licensed optometrists to annually take courses of study in subjects relating to the practice of optometry. This administrative regulation establishes the required hours of study and prescribes the approved programs and those records which shall be maintained and submitted showing proof of attendance at those programs.

Section 1. (1) The annual courses of study shall be completed each calendar year.

(2)(a) A licensee shall attend eight (8) continuing education credit hours.

(b) In addition to the requirements of paragraph (a) of this subsection, an optometrist, who is authorized to prescribe therapeutic agents, shall attend a minimum of seven (7) credit hours in ocular therapy and pharmacology, for a total of fifteen (15) continuing education credits.

Section 2. Educational courses which will be approved as meeting the minimum standards shall include those sponsored by a recognized and established state, regional (multistate) or national optometric association, an accredited college of optometry or an accredited college of medicine.

Section 3. (1) In order to be credited for an educational course, a licensee shall submit an attendance form to the board.

(2) The attendance form shall be submitted on or before December 31 of each calendar year.

Section 4. A sponsor of approved educational courses shall meet the following requirements:

- (1) He shall furnish an attendance form to a licensee;
- (2) The attendance form shall contain the following information:
  - (a) Name of the sponsoring organization;
  - (b) Name and address of the licensee;
  - (c) Educational topics addressed at the course;
  - (d) Identity of the speakers;
  - (e) Number of hours attended by the licensee;
  - (f) Date of the program;
  - (g) Statement by the licensee that he has attended the course;

and

(h) Signature of an official of the sponsoring organization.

Section 5. Credit shall not be given for more than two (2) hours attendance in courses of office management and administration.

Section 6. Credit may be granted for a maximum of two (2) hours continuing education through the Internet.

Section 7. Within one (1) year of initial licensure and thereafter every dicennial year, an optometrist shall successfully complete a continuing education course of not less than one (1) hour concerning HIV/AIDS that complies with KRS 214.610(1) and is approved by the Cabinet for Health Services HIV/AIDS Branch.

LISA SANFORD-HOWARD, President

APPROVED BY AGENCY: May 13, 2002

FILED WITH LRC: May 14, 2002 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on, June 24, 2002, at 10 a.m., at the Kentucky Board of Optometric Examiners, 301 E Main Street, Suite 850, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 17, 2002, 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 ad-

ministrative 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: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, 301 East Main Street, Suite 850, Lexington, Kentucky 40507, phone (859) 246-2744, fax (859) 246-2746.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Connie Calvert

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation specifies the requirement for HIV/AIDS continuing education.

(b) The necessity of this administrative regulation: This regulation is necessary to advise licensees about HIV/AIDS continuing education requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the requirements for HIV/AIDS which is mandated pursuant to KRS 320.280(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation informs licensees when they need to obtain HIV/AIDS continuing education and that the continuing education must be approved by the Cabinet for Health Services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment specifies when HIV/AIDS education must be obtained and who approves the course.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to advise licensees of information pertaining to HIV/AIDS continuing education.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment details specific information regarding HIV/AIDS continuing education which is mandated by statute.

(d) How the amendment will assist in the effective administration of the statutes: This amendment identifies details a licensee may be interested in. Publication of information creates a more informed body of licensees which aids in the effective implementation of the statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensees are affected by this regulation. The number of licensees impacted are less than one thousand every dicennial year and less than 100 on a yearly basis.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment decreases the HIV/AIDS continuing education from one hour every year to one hour every dicennial year.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation specifies internal procedures for the board and all licensees affected by the regulation are treated the same.

KENTUCKY REAL ESTATE COMMISSION  
(Amendment)

201 KAR 11:420. Standards for Internet advertising.

RELATES TO: KRS 324.117(6)

STATUTORY AUTHORITY: KRS 324.117(6), 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.117(6) requires the Real Estate Commission to establish an administrative regulation to define the manner in which licensees may utilize any Internet electronic communication for advertising or marketing. This administrative regulation establishes Internet standards.

Section 1. A real estate company's Internet home page shall include the following information:

(1) The company's full, nonabbreviated name as recorded with the Kentucky Real Estate Commission or the name of the real estate company's principal broker;

(2) A statement indicating the principal broker is a Kentucky licensed real estate broker if the principal office location is outside of Kentucky; and

(3) A street address and phone number for the company's principal office.

Section 2. A real estate Internet real property advertisement of a licensee, or offer or solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease shall include;

~~(1) The name of the licensee advertising the property or marketing services; and~~

(2) the name of the principal broker of the company with whom the licensee is affiliated pursuant to KRS 324.010(6) and 324.010(14) or the name of the real estate company with which the licensee's license is held.

Section 3. A nonprincipal broker real estate licensee's Internet home page shall include:

(1) The licensee's name;

(2) The principal broker with whom the licensee is affiliated or the name of the real estate company recorded with the Kentucky Real Estate Commission with which the licensee's license is held;

(3) A statement indicating the licensee holds a Kentucky license to broker real estate if the licensee's principal business location is outside Kentucky;

(4) The regulatory jurisdiction of the licensee's principal business address; and

(5) A street address and phone number for the licensee's principal business location.

ARVEL JERRY MCMAHAN, Chairperson

APPROVED BY AGENCY: May 10, 2002

FILED WITH LRC: May 13, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 24, 2002, at 10 a.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 2002, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lee B. Harris, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone (502) 425-4273, Fax (502) 426-2717.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lee B. Harris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes standards for advertising and marketing on the internet.

(b) The necessity of this administrative regulation: KRS 324.117(6) indicates the legislative intent to address this issue. As the internet has become more prevalent throughout society, it has become more utilized for real estate brokerage activity. However, special concerns exist for internet marketing that do not exist for print advertising. Specifically, print advertising almost necessarily must provide a phone number or address to reach the licensee. A phone number or address can be usually traced to one company or individual with the internet, anonymous advertising can be done through generic "screen names" or "email addresses". In order to provide accountability for licensees advertising on the internet and to prevent unlicensed brokerage, minimum accountability standards should be established.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute (KRS 324.117(6)) provides the Real Estate Commission specific authority to amend this regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: As indicated in (1)(b) above, the regulatory requirements make clear what disclosures are required for Internet advertising or marketing. These requirements are necessitated by the special nature of the Internet.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment eliminates the need for the agent's name to be on the Internet ads.

(b) The necessity of the amendment to this administrative regulation: The requirement for the agent's name will cost licensees a lot more money.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute asks the commission to set standards for Internet advertising.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow licensees to better follow the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All entities advertising or marketing real estate on the Internet will be subject to the requirements of this regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This change will save licensees money.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost anticipated.

(b) On a continuing basis: No cost anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed to implement this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not directly or indirectly establish any fees or funding.

(9) TIERING: Is tiering applied? Tiering is applied to the extent the requirements apply only to licensees advertising or marketing on the internet. If a licensee is not advertising or marketing on the internet, the licensee's activity would not contribute significantly to the problem the regulation is designed to address.



**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 fish limit size, daily catch limit, and field possession limit 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" or "creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) 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 the main stem river and 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 ruler 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 its 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 its 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; 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 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. 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:

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)



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- 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) Largemouth bass: size limit, fifteen (15) inches.
- (b) 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. 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 State Park Lake.
- (a) Fishing shall be during daylight hours only.
- (b) Largemouth bass: daily and possession limit, three (3) ~~one~~ fish; size limit, fifteen (15) inches or greater.
- (c) A person shall not possess shad or use shad for bait.
- (14) Cave Run Lake:
- (a) Largemouth bass: slot limit - a person may keep fish less than thirteen (13) inches or greater than sixteen (16) inches and shall release fish between thirteen (13) and sixteen (16) inches.
- (b) Smallmouth bass: size limit, sixteen (16) inches.
- (15) Cedar Creek Lake:
- (a) Largemouth bass: size limit, fifteen (15) inches; daily limit: three (3) fish.
- (b) Crappie: size limit, nine (9) inches; daily limit: fifteen (15) fish.
- (c) Bluegill and Redear sunfish (shellcracker): daily limit: thirty (30) fish, singly or combined.
- (d) Channel catfish: daily limit: four (4) fish.
- (e) A person shall not possess shad or use shad for bait.
- (16) Corinth Lake: a person shall not possess shad or use shad for bait.
- (17) Cumberland Lake.
- (a) Largemouth: size limit, fifteen (15) inches.
- (b) Smallmouth bass: size limit shall be eighteen (18) inches.
- (c) Striped bass: size limit, twenty-four (24) inches; daily and possession limit, two (2) fish.
- (d) Crappie: size limit, ten (10) inches.
- (18) Cumberland River downstream from Barkley Lake Dam.
- (a) Striped bass: daily and possession limit, three (3).
- (b) Sauger: size limit, fourteen (14) inches.
- (19) Cumberland River from Wolfe Creek Dam downstream to the Kentucky-Tennessee state line and tributaries. Brown trout: size limit, twenty (20) inches; creel limit, one (1).
- (20) Cyprus AMAX (currently owned by Addington Enterprises) and Robinson Forest Wildlife Management Areas. On impounded waters of the area:
- (a) Largemouth bass: size limit, fifteen (15) inches; daily limit three (3); possession limit, six (6).
- (b) Sunfish: daily limit, fifteen (15); possession limit, thirty (30).
- (c) Channel catfish: 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.
- (21) Dale Hollow Lake.
- (a) Smallmouth bass: slot limit - a person shall release fish between sixteen (16) and twenty-one (21) inches. The daily limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.
- (b) Walleye and its hybrids: daily limit, five (5); 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) Largemouth bass: size limit, fifteen (15) inches;
- (g) Black bass: aggregate daily limit, five (5), no more than two (2) of which shall be smallmouth bass.
- (h) Crappie: Size limit, ten (10) inches; daily limit, fifteen (15).
- (22) 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.]~~
- (23) 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.
- (24) 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.
- (25) Dog Fork, Wolfe County. A person shall:
- (a) Not fish except with an artificial bait with a single hook; and
- (b) Release brook trout.
- (26) East Fork Indian Creek in Menifee County. From October 1 through March 31, a person shall:
- (a) Not fish except with an artificial bait; and
- (b) Release trout.
- (27) 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.
- (28) Elmer Davis Lake.
- (a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.
- (b) A person shall not possess shad or use shad for bait.
- (29) 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.
- (30) Game Farm Lakes.
- (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; daily limit, three (3); possession limit, six (6); and
  2. Channel catfish: daily limit, four (4); possession limit, eight (8).
- (c) Lower Game Farm Lake:
1. A person thirteen (13) years or older shall not fish; and
  2. Daily limit, three (3) fish of any species.
- (31) Golden Pond in Land Between the Lakes. Channel catfish: daily possession limit, five (5) fish; size limit, fifteen (15) inch or greater limit.
- (32) General Butler State Park Lake. Largemouth bass: size limit, fifteen (15) inches.
- (33) ~~[(32)]~~ Grayson 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: size limit, fifteen (15) inches, daily and possession limit, five (5) fish.
- (34) ~~[(33)]~~ Greenbo Lake. A person shall not possess shad or use shad for bait.
- (35) ~~[(34)]~~ Green River Lake. Crappie: size limit, nine (9) inches.
- (36) ~~[(35)]~~ 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.
- ~~[(36) Hawk Creek in Laurel County. From October 1 through March 31, a person shall:~~

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- (a) Not fish except with an artificial bait; and  
(b) Release trout.
- (37) 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.
- (38) Jerrico Lake. Largemouth bass: size limit, fifteen (15) inches.
- (39) 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.  
(40) Laurel Lake.  
(a) Largemouth bass: size limit, fifteen (15) inches.  
(b) Smallmouth bass: size limit shall be eighteen (18) inches.  
(41) Lebanon City Lake (Fagan Branch). Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.  
(42) Leary Lake.  
(a) A person shall not fish except during daylight hours.  
(b) Largemouth bass: daily limit, three (3); possession limit, six (6).  
(c) Bluegill: daily limit, fifteen (15), possession limit, thirty (30).  
(d) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(43) 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) Channel catfish: daily limit, four (4); possession limit, eight (8).  
(e) A person shall not possess shad or use shad for bait.  
(44) Lake Malone. Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.  
(45) Marion County Lake.  
(a) Largemouth bass: size limit, fifteen (15) inches.  
(b) A person shall not possess shad or use shad for bait.  
(46) Mauzy Lake. Largemouth bass; no size limit.  
(47) McNeely Lake. A person shall not possess shad or use shad for bait.  
(48) Mill Creek Lake, in Powell County.  
(a) Largemouth bass, size limit, fifteen (15) inches or greater limit; daily possession limit, three (3).  
(b) A person shall not possess shad or use shad for bait.  
(49) Nolin River Lake, whose impoundment extends up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.  
(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.  
(50) 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.  
(51) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park. From October 1 through March 31, a person shall:  
(a) Not fish except with an artificial bait; and  
(b) Release trout.  
(52) Paintsville Lake. Largemouth bass and smallmouth bass: slot limit, twelve (12) to fifteen (15) inches.  
(53) Parched Corn Creek, Wolfe County. A person shall:  
(a) Not fish except with an artificial bait with a single hook;  
(b) Release brook trout.  
(54) Peabody Wildlife Management Area, for Goose Lake, Island Lake or South Lake:  
(a) Largemouth bass: 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: daily limit, four (4); possession limit, eight (8).  
(e) Walleye: size limit, fifteen (15) inches; daily and possession limit, one (1).  
(f) A person shall not:  
1. Fish:  
a. Except during daylight hours; and  
b. From October 15 through March 15; or  
2. Take frogs.  
(55) Pennyryle Lake. Largemouth bass, size limit, twelve (12) to fifteen (15) inch protective slot limit.  
(56) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:  
(a) Not fish except with an artificial bait with a single hook; and  
(b) Release brook trout.  
(57) ~~(56)~~ Lake Reba.  
(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit for largemouth bass, three (3).  
(b) A person shall not possess shad or use shad for bait.  
(58) ~~(57)~~ Rock Creek from the Bell Farm Bridge to the Tennessee state line. From October 1 through March 31, a person shall:  
(a) Not fish except with an artificial bait; and  
(b) Release trout.  
(59) ~~(58)~~ 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.  
(60) ~~(59)~~ Shanty Hollow Lake.  
(a) Largemouth bass: size limit, fifteen (15) inches.  
(b) A person shall not possess shad or use shad for bait.  
(61) ~~(60)~~ 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; and  
(b) Release brook trout.  
(62) ~~(61)~~ Spurlington Lake. A person shall not possess shad or use shad for bait.  
(63) ~~(62)~~ Sympson Lake. Largemouth bass: size limit, fifteen (15) inches.  
(64) ~~(63)~~ Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.  
(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 limit, ten (10); size limit, no more than five (5) in daily limit shall be fifteen (15) inches or longer.  
(65) ~~(64)~~ Taylorsville Lake WMA ponds (as designated).  
(a) Largemouth bass: size limit, fifteen (15) inches; daily limit one (1).  
(b) Channel catfish: daily limit, four (4) fish.  
(66) ~~(65)~~ Tennessee River downstream from Kentucky Lake Dam.  
(a) Striped bass: daily and possession limit, three (3).  
(b) Sauger: size limit, fourteen (14) inches.  
(67) ~~(66)~~ Wolf Creek Federal Fish Hatchery. Rainbow trout: creel limit five (5) in the developed portion of Hatchery Creek from the galvanized culvert/tile upstream to the hatchery discharge.  
(68) ~~(67)~~ Wood Creek Lake.  
(a) Crappie: size limit, nine (9) inches.  
(b) Largemouth and smallmouth bass: size limit, fifteen (15) inches.  
(69) ~~(68)~~ Yatesville Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

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Section 5. Delayed Trout Harvest. There shall be a delayed trout harvest October 1 - March 31 for the following streams:

- (1) Swift Camp Creek in Clifty Wilderness Area;
- (2) Casey Creek in Trigg County;
- (3) Lick Fork in Simpson County; and
- (4) Left Fork Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater.

C. THOMAS BENNETT, Commissioner

DR. JAMES RICH, Chairman

ANN R. LATTA, Secretary

APPROVED BY AGENCY: April 14, 2002

FILED WITH LRC: May 14, 2002 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 24, 2002 at 10 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 five business 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: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, fax (502) 564-0506

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What the administrative regulation does: Establishes the size limits of and daily possession limits for fish that can be taken from Kentucky waters.

(b) The necessity of the administrative regulation: To effectively manage the fish population of Kentucky.

(c) How does this administrative regulation conform with the authorizing statute: KRS 235.025(1) authorizes the department to promulgate administrative regulations necessary to establish fishing guidelines to protect fish species from overharvest. This administrative regulation is necessary to establish the motor size limits, types of boats, and types of motors on the waters of the Commonwealth.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025(1) by limiting the number and size of fish that may be taken from Kentucky waters. This will ensure the conservation of fish species.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: The amendment establishes a delayed trout harvest.

(b) The necessity of the amendment to this administrative regulation: to create a delayed trout season.

(c) How does the amendment conform to the authorizing statutes: See (c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who fish the waters of the Commonwealth.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The people who fish will be positively affected. This amendment will provide for increased possession limits and a delayed trout season.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to

implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations including water patrol.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because all people who fish the waters of Kentucky will be treated the same.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(Amendment)**

**301 KAR 2:111. Deer and turkey hunting on federal areas.**

RELATES TO: KRS 150.025(1), 150.170, 150.370, 150.390

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations relating to game and fish, including seasons and limits and designates areas where boating and fishing are permitted. This administrative regulation establishes consistent deer and turkey hunting season frameworks on federal areas.

Section 1. General Requirements. (1) Unless otherwise stipulated in this administrative regulation, the provisions of 301 KAR 2:172 and 301 KAR 2:140 shall apply.

(2) Except on the Daniel Boone National Forest and the Big South Fork National River and Recreation Area, on the areas listed in this administrative regulation, a hunter shall:

(a) Obtain a permit from the area before hunting;

(b) Not hunt deer or turkey except on assigned hunting dates;

(c) Remain in assigned areas;

(d) ~~Have the signature portion of a valid deer or turkey permit in his possession;~~

~~(e) Unless otherwise specified in this administrative regulation, tag deer with area tags issued on the area (in lieu of the state deer tag);~~

(e) ~~(f)~~ Keep the area tag attached to the deer until the carcass is processed; and

(f) ~~(g)~~ Check deer at a designated check station before leaving the area.

(3) If hunting is not precluded by other priorities, Land Between the Lakes, Fort Campbell, Fort Knox, Bluegrass Ordnance Depot Activity, Reelfoot National Wildlife Refuge, Clark's River National Wildlife Refuge, Ohio River Islands National Wildlife Refuge, the Daniel Boone National Forest, the Big South Fork National River and Recreation Area, and the West Kentucky National Guard Training Site may allow firearm or archery hunting for antlered or antlerless deer from September 1 through January 31.

(4) Use of tree stands. On a federal area, a person:

(a) Shall not use a nail, spike, screw-in device, wire or tree climber 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; and

(e) Shall not use an existing permanent tree stand.

Section 2. Land Between the Lakes. (1) A person shall not take more than:

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(a) Two (2) deer during archery hunts, as stipulated by the USDA Forest Service; and

(b) One (1) deer during quota hunts.

(2) Turkey archery hunts: one (1) turkey of either sex during deer archery hunt.

(3) Quota hunters shall:

(a) Apply in advance at Land Between the Lakes; and

(b) Check in prior to hunting, as required by the USDA Forest Service.

(4) ~~[A person shall tag a:~~

~~(a) Harvested turkey with the appropriate state turkey tag; and~~

~~(b) Harvested deer with either:~~

~~1. The appropriate antlered or antlerless state deer tag; or~~

~~2. A wildlife management area tag issued by Land Between the Lakes.~~

(5) A person harvesting deer or turkey shall:

(a) Check the carcass as required by the USDA Forest Service;

and

(b) Not hunt deer or turkey with crossbows.

Section 3. Fort Campbell. (1) Turkey, either sex:

(a) Deer archery hunters may take turkey;

(b) Fort Campbell may permit turkey firearm hunting on assigned areas and dates between October 15 and December 31; and

(c) Turkeys taken at Fort Campbell shall be bonus birds.

(2) White turkey.

(a) A person may take one (1) white turkey of either sex during open Fort Campbell hunting seasons.

(b) Statewide and post limits and tagging requirements shall not apply to white turkey.

Section 4. Reelfoot National Wildlife Refuge. (1) Bag limits. A person shall not take more than:

(a) Four (4) deer by archery, only two (2) of which shall ~~can~~ be antlered; and

(b) Two (2) deer by firearms, only one (1) of which shall ~~can~~ be antlered.

(2) Tagging and checking deer.

(a) A ~~quota~~ hunter shall tag deer with a tag issued by Reelfoot National Wildlife Refuge.

(b) Quota hunters shall comply with the check-in requirements of Reelfoot National Wildlife Refuge ~~[An archery hunter shall tag deer with the appropriate state tag or a tag issued by the Reelfoot National Wildlife Refuge].~~

(c) ~~[(3)]~~ An archery hunter shall check harvested deer through the state telephone check system.

Section 5. Bluegrass Ordnance Depot Activity. A person shall not take an antlered deer whose outside antler spread ~~limit~~ is less than fifteen (15) inches.

Section 6. Fort Knox. A person shall not take an antlered deer whose outside antler spread is less than twelve (12) inches.

C. THOMAS BENNETT, Commissioner  
DR. JAMES RICH, Chairman

ANN R. LATTA, Secretary

APPROVED BY AGENCY: April 14, 2002

FILED WITH LRC: May 14, 2002 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 24, 2002 at 10 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 five business 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 regula-

tion to: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, fax (502) 564-0506

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What the administrative regulation does: establishes the deer hunting procedures, seasons and legal equipment under which deer may be taken on federal areas.

(b) The necessity of the administrative regulation: To establish deer hunting limits for controlling the deer population on federal areas and establish guidelines for orderly and safe harvesting of deer on these public areas.

(c) How does this administrative regulation conform with the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing deer. KRS 150.620 authorizes the department to manage public lands for hunting and fishing. This administrative regulation establishes hunting season dates, permitted equipment use and check-in and check-out requirements for hunting on federal areas.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will assist in effectively managing the deer populations on federal areas and ensure safe and orderly hunting practices.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: The amendment changes season days, equipment use and check-in and tagging requirements for hunting on federal areas.

(b) The necessity of the amendment to this administrative regulation: To ensure effective deer management and safe and orderly hunting seasons on the federal areas.

(c) How does the amendment conform to the authorizing statutes: See (c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who hunt on federal areas.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The only impacted group affected by this administrative regulation is the people who wish to use federal areas for deer and turkey hunting.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The current budget of the Department of Fish and Wildlife Resources Division of Wildlife already oversees the deer program and the Law Enforcement Division already oversees the enforcement of administrative regulations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because all persons who hunt deer and turkey on federal areas are treated the same.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(Amendment)**

**301 KAR 2:178. Deer hunting on wildlife management areas.**

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.620 authorize grant the department authority to establish 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) "Bonus quota hunt deer permit" means a permit that authorizes a hunter participating in a WMA or state park quota hunt and who possesses a statewide deer permit ~~[which in conjunction with the statewide deer permit allows the holder]~~ to take additional deer during a quota hunt.

(2) "Mentor hunt" means a quota youth hunt in which the adult accompanying the youth is eligible to take a deer.

(3) "Modern firearm gun season" means the ten (10) or sixteen (16) consecutive day period beginning the second Saturday in November when breech-loading firearms may be used to take deer.

(4) "Private inholding" means privately-owned property completely surrounded by a WMA.

(5) "Quota hunt" means a WMA deer hunt, including a youth quota hunt, where a participant is selected by a random drawing.

(6) "Quota youth hunt" means an adult-accompanied hunt in which only persons under age sixteen (16) are eligible to apply and to take deer ~~[a hunt in which only a youth is eligible to apply for the hunt and to take a deer and the youth must be accompanied by an adult]~~.

(7) "Statewide deer requirements" mean the season dates, zone descriptions and other requirements for deer hunting established in 301 KAR 2:172 and 301 KAR 2:174.

(8) "Wildlife management area or WMA" means a tract of land the department controls or manages through ownership, lease, license or cooperative agreement.

(9) ~~"WMA" means a wildlife management area.~~

(10) "Youth" means a person who has not yet reached his or her:

(a) 16th birthday for a quota youth [quota] hunt or mentor hunt by the date of the hunt; or

(b) 18th birthday for the statewide youth firearm season [hunt].

Section 2. General WMA Requirements. (1) Unless specified otherwise in this administrative regulation, statewide deer requirements shall apply to a WMA.

(2) Deer hunting on WMAs listed in Section 6 [4] of this administrative regulation, shall be permitted only as stated, except archery hunting is allowed under statewide archery requirements unless otherwise noted.

(3) On a WMA and ~~[i] 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 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; and

(e) Shall not use an existing permanent tree stand.

(4) The owner of a private inholding or his guest:

(a) May hunt on the owner's lands without application; and

(b) Shall follow all other requirements for the WMA which sur-

rounds the inholding.

(5) A person shall not hunt on a private inholding when deer hunting is not allowed on the surrounding WMA.

(6) Except to travel through a WMA on an established public road or to use an area designated open by a sign, a person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area.

(7) Except if waterfowl hunting or hunting at night, a person hunting any species or a person accompanying a hunter shall wear hunter orange clothing as specified in 301 KAR 2:172 while on a WMA when firearms are permitted for deer hunting. ~~;~~

~~(a) That meets the requirements specified in 301 KAR 2:172; and~~

~~(b) On a WMA when firearms are permitted for deer hunting.]~~

(8) A person shall not place, distribute or hunt over bait as prohibited in 301 KAR 3:010.

Section 3. General Quota Hunt Procedures. (1) A person who is not selected and applies to hunt the following year shall be given one (1) preference point for each year he was not selected.

(2) If applying as a party, the application for the party shall be assigned the highest total number of points of any individual member.

(3) Youth hunters may apply for one (1) youth quota hunt and one (1) general quota hunt.

(4) A random selection of those with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(5) 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.

(6) Unless specified otherwise in Section 6 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.

(7) Unless otherwise specified in Section 6 of this administrative regulation, a hunter may take up to two (2) deer on a quota hunt, only one (1) of which may be an antlered deer.

(8) Bonus quota deer hunt permits shall only be used for quota hunts. Deer taken with these permits do not count toward the statewide total deer limit.

(9) There shall be one (1) person drawn from the eligible applicants to the quota hunts who were not selected in the original drawing. This person shall receive one (1) deer permit which carries with it all the privileges of the Special Commission Permit described in 301 KAR 3:100. ~~[Quota Hunt Procedures. (1) A person selected for a quota hunt:~~

~~(a) Shall hunt on the assigned date and in the assigned area; and~~

~~(b) May use a firearm, archery equipment or a crossbow during the quota hunt as specified by the 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, and tract assignments if necessary, by a random drawing of all applicants.~~

~~(7) A person checking in for a quota hunt shall show;~~

~~(a) His Social Security number;~~

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(b) A valid hunting license, except a person on military furlough for more than three (3) days may show his military identification instead of a license; and

(c) The receipt portion of a valid deer permit with:

1. An unused carcass tag;
2. A bonus quota hunt deer permit;
3. If the quota hunt is in a Zone 1 county as defined by 301 KAR 2:174, a bonus Zone 1 antlerless deer permit;
4. If the person will hunt with bow or crossbow, a bonus antlerless archery deer permit; or

5. 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) If applying as a party, the application for the party shall be assigned the preference points which reflects the highest number of points of any individual member.

(10) Youth hunters may apply for one (1) youth quota hunt and one (1) general quota hunt.

(11) A random selection of those with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(12) 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.

(13) A person shall check in at the beginning of the quota hunt period and check out when finished hunting, when the hunter's bag limit is reached, or when the quota hunt ends, except as otherwise specified in this administrative regulation. Hours for check in and out shall be from noon to 8 p.m., local time on the day before the hunt and between 5:30 a.m. and 8 p.m., Eastern Time, on the days of the hunt.

(14) 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.

(15) If an antler spread limit is in effect on a WMA, a quota hunter who harvests an antlered deer under the spread limit shall not be eligible to apply for a quota hunt the following year.

(16) 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.

(17) Unless otherwise specified in Section 4 of this administrative regulation, a hunter may take up to two (2) deer on a quota hunt, only one (1) of which shall be an antlered deer.

(18) Bonus quota hunt permits can only be used for quota hunts. Deer tagged with these permits do not count toward the statewide total deer limit.

(19) There shall be one (1) person drawn from the eligible applicants to the quota hunts who were not selected in the original drawing. This person shall receive one (1) deer permit which carries with it all of the privileges of the Special Commission Permit found in 301 KAR 3:100.

**Section 4. Quota Hunt Application Process.** A person applying for a quota hunt shall:

(1) Call 1-877-868-4868 from a touch-tone phone between August 1 and August 31;

(2) Enter his Social Security number;

(3) Indicate a first and second choice of hunts; and

(4) Pay a three (3) dollar application fee for each applicant, prior to the draw by:

- (a) Check;
- (b) Money order;
- (c) Visa; or
- (d) Master Card.

(5) Not apply more than one (1) time;

(6) Not apply as a group of more than five (5) persons; and

(7) Not be eligible to participate in a quota hunt unless selected pursuant to this administrative regulation.

**Section 5. Quota Hunt Participant Requirements.** Except as

otherwise specified in this administrative regulation, a person selected to participate in a quota hunt shall:

(1) Check-in and show his Social Security number;

(2) Possess an annual Kentucky hunting license, except a person on military furlough for more than three (3) days who shall show his military identification and status instead of a license;

(3) Show proof of purchasing a current statewide deer permit;

(4) Possess a deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;

(5) Possess an unused bonus deer permit, if he has already taken the two deer authorized by possession of the statewide deer permit;

(6) Not be required to possess a deer permit if he possesses and presents a senior/disabled combination hunting and fishing license at time of check-in;

(7) Hunt on assigned date and in assigned areas selected by random drawing of applicants when necessary;

(8) Comply with hunting equipment restrictions specified by the type of hunt;

(9) Check in from noon to 8 p.m. local time on the day before the hunt or between 5:30 a.m. and 8 p.m. Eastern Time on the day of the hunt, except as otherwise specified in this administrative regulation;

(10) Except as otherwise specified in this administrative regulation, check out:

(a) When finished hunting;

(b) When the hunter's bag limit is reached; or

(c) By 8 p.m. Eastern Time on the final day of the hunt;

(11) Failure to check out properly shall result in a hunter being declared ineligible to apply for the next year's drawing; and

(12) Comply with the fifteen (15) inch minimum outside antler spread harvest restriction for antlered deer when in effect, or be ineligible to apply for a quota hunt the following year.

**Section 6. WMA Hunting Dates, Requirements and Restrictions.**

(1) ~~Adair WMA. [WMA Hunting Dates and Requirements. (1) Adair WMA.~~

(a) ~~Youth hunt, any deer: open under statewide youth hunt, except a person shall not hunt deer with a firearm.~~

(b) ~~Crossbow: open under statewide deer requirements.~~

(2) ~~Addington Enterprises-Robinson Forest WMA.~~

(a) ~~A person shall not hunt deer on the main block of Robinson Forest.~~

(b) ~~Muzzleloader, modern firearm, and youth firearm seasons [hunt]: open under statewide deer requirements, except a person shall not hunt deer with a modern firearm.~~

(3) ~~Ballard WMA.~~

(a) ~~Quota youth hunts, any deer or antlerless deer as determined by a random drawing: first youth quota hunt for two (2) consecutive days beginning the fourth Saturday in October; second youth quota hunt for two (2) consecutive days beginning the first Saturday in November.~~

(b) ~~Quota hunt, any deer or antlerless deer as determined by a random drawing: the third [fourth] Saturday in November.~~

(c) ~~Archery quota hunt, any deer or antlerless deer as determined by a random drawing: two (2) consecutive days beginning the third Saturday in October.~~

(d) ~~Area shall be closed to the statewide archery season.~~

(e) ~~Crossbow, modern firearm, youth firearm season [hunt] and muzzleloader: open under statewide deer requirements only on the 400 acre tract south of Sallie Crice Road.~~

(4) ~~[Barlow Bottoms Wildlife Management Area.~~

(a) ~~On the Olmsted Unit: archery, muzzleloader and youth hunt: open under statewide deer requirements only through October 31.~~

(b) ~~On the Swan Lake Unit: archery: open under statewide deer requirements only through October 14.~~

(c) ~~On the Peal Unit: crossbow youth hunt, modern firearms, and muzzleloader: open under statewide deer requirements.~~

(5) ~~Barren River Wildlife Management Area.~~

(a) ~~On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person:~~

1. ~~Shall not hunt deer with a breech-loading firearm; and~~

2. ~~May hunt deer with a crossbow.~~



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- (b) ~~Quota hunt, any deer: for two (2) consecutive days beginning the second Saturday in November. During the remainder of the modern gun season, the area will be open under the statewide modern gun deer season with equipment restrictions as noted in paragraph (a) of this subsection.~~
- (c) ~~Youth firearm season [hunt, any deer]: open under statewide deer requirements.~~
- (c) ~~[(d)]~~ Crossbow, modern firearm, muzzleloader: open under statewide deer requirements with equipment restrictions as noted in paragraph (a) of this subsection.
- (5) ~~[(6)]~~ Beaver Creek WMA. Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.
- (a) Limit: one (1) deer during the quota hunt.
- (b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
- (6) Boatwright Wildlife Management Area.
- (a) On the Swan Lake Unit: archery: open under statewide deer requirements through October 14; and
- (b) On the Peal Unit and Olmstead Unit: crossbow, youth firearm, modern firearm and muzzleloader: open under statewide deer requirements.
- (7) Cane Creek WMA.
- (a) Crossbow, modern firearms, and muzzleloader: open under statewide deer requirements, except a hunter shall not take an antlerless deer with a firearm during the modern firearm season.
- (b) Youth firearm season ~~[hunt, any deer]~~: open under statewide deer requirements ~~[youth hunt]~~.
- (8) Central Kentucky WMA. Archery hunt, any deer:
- (a) Wednesdays between the fourth week in September through December 17, except during scheduled field trials as posted on the area bulletin board.
- (b) December 18 through the third Monday in January.
- (9) Claude Cummins WMA. Crossbow: open under statewide deer requirements.
- (10) Clay WMA.
- (a) Archery, any deer: October 15 through the third Monday in January, except during the quota hunt.
- (b) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.
- (c) Youth firearm season ~~[hunt, any deer]~~: open under statewide deer requirements ~~[during the statewide youth hunt]~~.
- (d) On the Marietta Booth tract: archery~~[- any deer]~~: open under statewide deer requirements, except during the quota hunt.
- (11) Daviess County WMA. Crossbow: open under statewide deer requirements.
- (12) Dewey Lake WMA.
- (a) Youth firearm season ~~[hunt, any deer]~~: open under statewide deer requirements ~~[during statewide youth hunt]~~.
- (b) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in December. Limit: one (1) deer.
- (c) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
- (13) Fishtrap Lake WMA.
- (a) Quota hunt, any deer: two (2) consecutive days beginning on the Saturday before Thanksgiving. Limit: one (1) deer.
- (b) Youth firearm season ~~[hunt, any deer]~~: open under statewide deer requirements ~~[during statewide youth hunt]~~.
- (14) Grayson Lake WMA.
- (a) Youth quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.
- (b) The property of Camp Webb shall be open to hunting during the youth quota hunt.
- (c) Crossbow hunt, any deer: the third Saturday in September through the third Monday in January, except during the youth quota hunt.
- (d) Youth firearm season ~~[hunt]~~, any deer: open during statewide youth firearm season ~~[hunt]~~.
- (15) Green River Lake WMA.
- (a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November. Limit: one (1) deer.
- (b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
- (c) For the purposes of check in and check out times, Green River WMA shall be considered in the Eastern Time Zone.
- (16) Higginson-Henry WMA.
- (a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in December.
- (b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
- (17) J.C. Williams WMA. Crossbow: open under statewide deer requirements.
- (18) Kentucky River WMA. Crossbow: open under statewide deer requirements.
- (19) Kleber WMA. Crossbow: open under statewide deer requirements, except during quota hunt.
- (a) Quota hunts, any deer: first quota hunt, two (2) consecutive days beginning the first Saturday in November; second quota hunt, two (2) consecutive days beginning the first Saturday in December.
- (b) Youth firearm season ~~[hunt, any deer]~~: open under statewide deer requirements ~~[during the statewide youth hunt]~~.
- (20) Lewis County WMA. Muzzleloader and crossbow: open under statewide deer requirements.
- (21) Curtis Gates Lloyd WMA. Crossbow: open under statewide deer requirements.
- (22) ~~[(24)]~~ Mill Creek WMA. Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November. Limit: one (1) deer.
- (23) ~~[(22)]~~ Mud Camp Creek WMA. Crossbow, youth firearm season and muzzleloader season: open under statewide deer requirements.
- (24) ~~[(23)]~~ Mullins WMA. Crossbow: open under statewide deer requirements.
- (25) ~~[(24)]~~ Paintsville Lake WMA.
- (a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November. ~~[Limit: one (1) deer.]~~
- (b) Youth firearm season ~~[hunt, any deer]~~: open under statewide deer requirements ~~[during the statewide youth hunt]~~.
- (c) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
- (26) ~~[(25)]~~ Peabody WMA.
- (a) Quota hunt, any deer: five (5) consecutive days beginning the second Saturday in November. A quota hunter may hunt without checking in or out.
- (b) Crossbow, modern firearm and muzzleloader, any deer: eleven (11) consecutive days beginning the Thursday after the quota hunt. ~~[The first five (5) days shall be for antlered or antlerless deer; the remaining six (6) days shall be for antlerless only.]~~
- (c) Muzzleloader hunt, any deer: seven (7) consecutive days beginning the second Saturday in December.
- (d) Youth firearm season ~~[hunt, any deer]~~: open under statewide deer requirements ~~[youth hunt]~~.
- (27) ~~[(26)]~~ Pennyrlle Forest Tradewater WMA.
- (a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.
- (b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
- (28) ~~[(27)]~~ Pioneer Weapons WMA. Statewide requirements shall apply except that a person:
- (a) Shall not use a breech-loading gun or any other type of modern firearm;
- (b) Shall not use an in-line muzzleloading gun;
- (c) Shall not use a scope or optical enhancement; and
- (d) May use a crossbow during the entire archery season.
- ~~[(28) Redbird WMA.]~~
- ~~(a) Archery hunt, any deer: the third Saturday in September through the third Monday in January.~~
- ~~(b) Modern firearm, antlered deer: two (2) consecutive days beginning the second Saturday in November.~~
- ~~(c) A firearm deer hunter shall check his deer at the Redbird Ranger District Office.]~~
- (29) Dr. James R. Rich WMA. Crossbow: open under statewide deer requirements, except during quota hunt.
- (a) Quota hunts, any deer: first quota hunt, two (2) consecutive days beginning the first Saturday in November; second quota hunt, two (2) consecutive days beginning the first Saturday in December.
- (b) Youth firearm season ~~[hunt, any deer]~~: open under statewide deer requirements ~~[during the statewide youth hunt]~~.
- (30) Sloughs WMA.

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(a) On the Sauerheber Unit: archery, muzzleloader and youth firearm season ~~[hunt]~~: open under statewide deer requirements only through October 31.

(b) The remainder of the WMA: crossbow, modern firearm, muzzleloader and youth firearm season ~~[hunt]~~: open under statewide deer requirements.

(31) Stewart Island WMA.

(a) Muzzle-loader hunt, any deer: two (2) days beginning the fourth Saturday in October.

(b) Archery hunt, any deer: the third Saturday in September through October 14.

(32) T. N. Sullivan WMA. Crossbow: open under statewide deer requirements.

(33) R. F. Tarter WMA. Crossbow, youth firearm and muzzle-loader seasons: open under statewide deer requirements.

(34) Taylorsville Lake WMA.

(a) Quota hunt, any deer:

1. Two (2) consecutive days beginning the first Saturday in November; ~~and~~

2. Two (2) consecutive days beginning the first Saturday in December; ~~and~~

3. Two (2) consecutive days beginning the first Saturday in January.

(b) Youth firearm season ~~[hunt, any deer]~~: open under statewide deer requirements ~~[during the statewide youth hunt]~~.

(c) Crossbow: open under statewide requirements, except closed during quota hunt.

(35) Twin Eagle WMA. Crossbow: open under the statewide deer requirements.

(36) Twin Knobs Campground.

(a) Quota hunt, any deer: the second Saturday in December for persons with a disability which impairs their mobility as defined in 301 KAR 3:026.

(b) The area shall be closed to the statewide archery season.

(37) West Kentucky WMA.

(a) Quota hunts, any deer.

1. Two (2) consecutive days beginning the third Saturday in November; ~~and~~

2. Two (2) consecutive days beginning the second Saturday in December.

(b) Mentor quota hunt ~~[any deer]~~: two (2) consecutive days beginning the ~~third~~ first Saturday in December ~~[November]~~. There shall be no more than two (2) youths for each mentor and no more than one (1) mentor for each youth. Mentors shall not take antlered deer. Youths may take any deer.

(c) Crossbow hunt: open under statewide deer requirements. ~~[any deer: open during statewide crossbow season.]~~

(d) Firearm hunters shall not use a breech-loading rifle or breech-loading handgun.

(e) A person shall not carry a firearm in posted zones.

(38) 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; and

(c) The portion of the area south of Westvaco Road shall be open to archery deer hunting through October 31 and closed to public access between November 1 and March 15. The area shall ~~[also]~~ be open for the statewide youth firearm season ~~[hunt]~~ and early muzzleloader weekends.

(39) White City WMA.

(a) Quota hunt, any deer: five (5) consecutive days beginning the second Saturday in November. A quota hunter may hunt without checking in or out.

(b) Crossbow, modern firearm and muzzleloader, any deer: eleven (11) consecutive days beginning the Thursday after the quota hunt. ~~[The first five (5) days shall be for antlered or antlerless deer; the remaining six (6) days shall be for antlerless only.]~~

(c) Muzzleloader hunt, any deer: seven (7) consecutive days beginning the second Saturday in December.

(d) Youth firearm season ~~[hunt, any deer]~~: open under statewide deer requirements ~~[youth hunt]~~.

(40) Yatesville WMA.

(a) Crossbow, modern firearm and muzzleloader: open under

statewide deer requirements except a person shall not take antlerless deer with a firearm during the modern firearm deer season.

(b) Youth firearm season ~~[hunt, any deer]~~: open under statewide deer requirements ~~[during statewide youth hunt]~~.

(41) Yellowbank WMA.

(a) Mentor quota hunt ~~[any deer]~~: two (2) consecutive days beginning the first Saturday in November. There shall be no more than two (2) youths for each mentor and no more than one (1) mentor for each youth. Mentors shall not take antlered deer. Youths may take any deer.

(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.

(42) Zilpo Campground.

(a) Quota hunt, any deer: the second Saturday in December for persons with a disability which impairs their mobility as defined in 301 KAR 3:026.

(b) The area shall be closed to the statewide archery season.

C. THOMAS BENNETT, Commissioner

DR. JAMES RICH, Chairman

ANN R. LATTA, Secretary

APPROVED BY AGENCY: April 14, 2002

FILED WITH LRC: May 14, 2002 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 24, 2002 at 10 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 five business 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: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, fax (502) 564-0506

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What the administrative regulation does: establishes the deer hunting procedures, seasons and legal equipment under which deer may be taken on wildlife management areas.

(b) The necessity of the administrative regulation: To establish deer hunting limits for controlling the deer population on WMAs and establish guidelines for orderly and safe harvesting of deer on these public areas.

(c) How does this administrative regulation conform with the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing deer. KRS 150.620 authorizes the department to manage public lands for hunting and fishing. This administrative regulation establishes hunting season dates, permitted equipment use and check-in and check-out requirements for hunting on WMAs.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will assist in effectively managing the deer populations on WMA and ensure safe and orderly hunting practices.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change the existing administrative regulation: The amendment changes season days, equipment use and check-in and tagging requirements for hunting on WMAs.

(b) The necessity of the amendment to this administrative regulation: To ensure effective deer management and safe and orderly hunting seasons on the WMAs.

(c) How does the amendment conform to the authorizing statutes: See (c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (d) above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who hunt on WMAs.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The only impacted group affected by this administrative regulation is the people who wish to use WMAs, either for hunt, hiking or wildlife watching.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The current budget of the Department of Fish and Wildlife Resources Division of Wildlife already oversees the deer program and the Law Enforcement Division already oversees the enforcement of administrative regulations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because all persons who hunt deer on WMAs are treated the same.

DEPARTMENT OF AGRICULTURE  
Division of Animal Health  
(Amendment)

302 KAR 20:120. Treatment of imported stallions.

RELATES TO: KRS 257.030

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that the importing of an animal into Kentucky complies with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of livestock into, through, or within Kentucky. This administrative regulation establishes techniques ~~[a technique]~~ for the treatment of stallions ~~[a stallion]~~ imported into Kentucky from a country outside the continental United States, its territories and possessions, or Canada.

Section 1. Definitions. (1) "Breeding" or "bred" means the natural covering of a mare.

(2) "CF test" means a complement-fixation test on equine serum for the detection of antibodies to the contagious equine metritis bacterium (CEM).

(3) "Set of swabs", for female equines, means a swab obtained from the clitoral sinus and clitoral fossa.

(4) "Set of swabs", for an intact male equine, means a swab obtained from the prepuce, the urethral sinus, and the fossa glandis, including the diverticulum of the fossa glandis.

(5) "Stallion" means a male horse, other than a gelding, over 731 days of age. ~~(Definitions. (1) "Stallion" means a male horse other than gelding over 731 days of age.~~

~~(2) "Breeding" means natural or artificial insemination of a mare.~~

~~(3) "CF test" means a complement-fixation test on equine serum for the detection of antibodies for contagious equine metritis (CEM) bacterium.~~

~~(4) "Set of cultures" for female equines means a culture is obtained from the clitoral sinus (if intact), and clitoral fossa.~~

~~(5) "Set of cultures" for an intact male equine means a culture is obtained from the prepuce, the urethral sinus, and the fossa glandis, including the diverticulum of the fossa glandis.]~~

Section 2. Stallions over 731 days of age at the time of importation from ~~[A stallion imported into Kentucky after reaching 731 days of age that has been]~~ outside the continental United States, its territories, possessions, or Canada shall, before ~~[being used for]~~ breeding, be treated by or under the direct supervision of a Kentucky licensed, accredited veterinarian according to the following:

(1)(a) While wearing disposable gloves and using disposable equipment, the veterinarian shall collect one (1) set of swabs ~~[cultures]~~ from the stallion to be cultured for CEM.

(b) The stallion shall be bred to two (2) test mares that have been qualified as CEM free. The test mares shall qualify as CEM free if:

1. They test negative to a CF test; and

2. A set of swabs ~~[cultures]~~ taken from the mares on days one (1), four (4) and seven (7) are culture negative for the CEM bacterium.

(c) After being bred by the stallion, a set of swabs ~~[culture specimens]~~ shall be collected from the test mares on the third, sixth and ninth days after breeding.

(d) The test mares shall have a CF test ~~[complement-fixation test (CF)]~~ conducted fifteen (15) days after breeding.

(e) With the stallion in full erection, the veterinarian shall, for five (5) consecutive days, wash and clean (scrub) with a solution of not less than two (2) percent chlorhexidine in a detergent base, the prepuce, urethral sinus, and fossa glandis, including the diverticulum of the fossa glandis. The external genitalia, the prepuce, urethral sinus, and fossa glandis, including the diverticulum of the fossa glandis, shall then be filled and covered with an antibiotic ointment that is effective against the CEM organism and which is approved by the USDA and the Kentucky State Veterinarian. All tests and cultures required by this section shall be conducted at a laboratory approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian. If all required specimens taken from the test mares and stallion are test negative and culture negative for the CEM bacterium, the stallion and the test mares may be eligible for a quarantine release.

Section 3. A user fee shall be assessed for an equine import. (1) An import broker shall pay a fee for each shipment of equine (stallions and mares) which arrive at a Kentucky quarantine destination on weekends, state-recognized holidays and between the hours of 5:01 p.m. and 6:59 a.m.

(a) For weekends and between the hours of 5:01 p.m. and 6:59 a.m. the assessed fee shall be forty (40) dollars per hour with a minimum of two (2) hours time charged.

(b) For state-recognized holidays the assessed fee shall be eighty (80) dollars per hour with a minimum of two (2) hours time charged. The holiday fee will apply to all stallions received during the holiday period which will be from the last scheduled work day preceding the holiday, through the next scheduled work day following the holiday.

(2) The broker shall pay by check, made payable to the Kentucky State Treasurer, ~~[to the Kentucky Department of Agriculture]~~ the assessed fee within ninety-six (96) hours of receipt of the charges.

(3) Failure to comply with the user fee schedule may result in an application for importation to be delayed or denied.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: May 14, 2002

FILED WITH LRC: May 14, 2002 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Friday, June 21, 2002, at 10 a.m., at the Department of Agriculture, Conference Room, Room 188, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Friday, June 14, 2002, 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made available unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit writ-

ten comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mark Farrow, General Counsel, Kentucky Department of Agriculture, Room 188, Capitol Annex, Frankfort, Kentucky 40601, phone: (502) 564-5126, fax: (502) 564-5016.

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dr. Don Notter, State Veterinarian

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes quarantines and other measures to control the movement of livestock into, through, or within Kentucky; establishes techniques for the treatment of stallions imported into Kentucky.

(b) The necessity of this administrative regulation: To prevent the spread disease in equine.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute mandates the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 257. This regulation establishes procedures needed for implementation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes quarantines and other measures for equine movement into, through, or within Kentucky and also establishes treatment techniques to prevent the spread of disease by imported stallions.

(2) If this is an amendment, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment makes technical changes to the regulation and specifies the timeframe of "holiday period".

(b) The necessity of the amendment to this administrative regulation: To clarify the timeframe of "holiday period".

(c) How the amendment conforms to the content of the authorizing statutes: Statutes authorize regulations to carry out administration and enforcement of KRS 257.030.

(d) How the amendment will assist in the effective administration of the statutes: Specifies the timeframe of "holiday period".

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Potentially all equine breeders in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The participants will be required to conform to guidelines.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: N/A

(b) On a continuing basis: N/A

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no fee increase to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish or increase any additional fees.

(9) TIERING: Is tiering applied? Tiering was not used. This administrative regulation applies equally to all individuals and entities regulated by it.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amendment)

### 401 KAR 5:002. Definitions for 401 KAR Chapter 5.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.70-100, 224.70-120, 224.99-010, ~~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,] 40 CFR Parts 35, 116, 130, [134,] 136, 401 - 471, 15 USC 2601 et seq., 33 USC 1251 et seq., 1345, 6901 et seq., 42 USC 7401 et seq., 9601, 11023 [1281, 1288, 1313(e), 1314(b), 1341, 1342, 42 USC 300f,], 9601-9675]~~

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, ~~224.10-110, 224.16-060, 224.70-100, 224.70-110, 224A-111, 224A-112, 224A-113,] 40 CFR Parts 116, 130, [134,] 136, 401 - 471, 15 USC 2601 et seq., 33 USC 1251 et seq., 1342, 1345 [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, 401 KAR 5:029, 401 KAR 5:030, and 401 KAR 5:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. 401 KAR Chapter 5 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 401 KAR 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<sub>50</sub>, 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<sub>50</sub>, 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 401 KAR 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.

(11) "Animal feeding operation" means, for purposes of 401 KAR 5:005 and 401 KAR 5:050 to 401 KAR 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 401 KAR 5:050 to 401 KAR 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 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. The 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 at 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 re-

quirements 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 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 401 KAR 5:050 to 401 KAR 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) "Copermittee" means a permittee to a KPDES permit that is only responsible for the permit conditions relating to the discharge for which it is the operator.

(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, [433 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 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" is defined at KRS 224.01-010(12).

(90) "Effluent limitations guideline" means a federal regulation published by the administrator under CWA Section 304(b), [133 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) "Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.

(103) "°F" means degrees Fahrenheit.

(104) "Facility" means:

(a) For purposes of 401 KAR 5:005 or ~~[,] 401 KAR 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 401 KAR 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.

(105) "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.

(106) "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.

(107) "Filter strip" means a strip or area of vegetation for removing sediment, organic material, and other pollutants from runoff and wastewater.

(108) "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.

(109) "Force main" means a conduit used to transport sewage from a pump discharge to a sewer line, pump station, or WWTP.

(110) "Gas" means, for purposes of 401 KAR 5:090, all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.

(111) "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.

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(112) "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.

(113) "GPD" or "gpd" means gallons per day.

(114) "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 401 KAR 5:080, a single effluent portion which is not a twenty-four (24) hour composite sample.

(115) "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.

(116) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.

(117) "Hazardous substance" means, for purposes of 401 KAR 5:050 to 401 KAR 5:080, any pollutant designated under 40 CFR Part 116.

(118) "Holding pit" means an earthen excavated depression which receives and stores produced water at a facility.

(119) "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.

(120) "Hypolimnion" means the lower cold region of a thermally stratified lake or reservoir that extends below the metalimnion to the bottom.

(121) "IC<sub>25</sub>" means an inhibition concentration of twenty-five (25) percent.

(122) "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.

(123) "Impact" means, for the purpose of 401 KAR 5:026 through 401 KAR 5:031, a change in the chemical, physical, or biological quality or condition of a surface water.

(124) "Impairment" means, for the purpose of 401 KAR 5:026 through 401 KAR 5:031, a detrimental impact to a surface water that prevents attainment of a designated use.

(125) "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.

(126) "Incorporated place" means a city, town, township, or village that is created under the Kentucky Revised Statutes.

(127) "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.

(128) "Indirect discharge" or "discharge" means, for purposes of 401 KAR 5:057, the introduction of pollutants into a POTW from a nondomestic industrial source regulated by the program.

(129) "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly-owned treatment works.

(130) "Industrial user" or "user" means a source of indirect charge.

(131) "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.

(132) "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.

(133) "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.

(134) "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.

(135) "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.

(136) "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.

(137) "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.

(138) "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) 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 regulations or permits issued thereunder: 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.

(139) "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.

(140) "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.

(141) "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.

(142) "Intermittent water" means a stream that flows only at certain times of the year.

(143) "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.

(144) "IWWTP" means an industrial WWTP.

(145) "KAR" means Kentucky Administrative Regulations.

(146) "Karst" means the type of geologic terrain underlain by carbonate rocks where significant solution of rock has occurred due to flowing groundwater.

(147) "Karst feature" means a naturally occurring feature formed by the dissolution of carbonate rock including but not limited to a sinkhole drain, karst window, swallet, spring, sinking stream, or cave.

(148) "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.

(149) "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.

(150) "Kentucky No Discharge Operational Permit" or "KNODP"

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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.

(151) "kg" means kilograms.

(152) "KPDES" means the Kentucky Pollutant Discharge Elimination System.

(153) "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(154) "KRS" means Kentucky Revised Statutes.

(155) "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.

(156) "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(157) "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.

(158) "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 1990 Decennial Census by ~~[latest census of]~~ the Bureau of the Census; or

(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.

(159) "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.

(160) "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.

(161) "LC<sub>1</sub>" 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.

(162) "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.

(163) "Log sorting and log storage facilities" means, for purposes of 401 KAR 5:050 to 401 KAR 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.

(164) "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), incorporated by reference in Section 3 of this administrative regulation.

(165) "Maintain" means, for purposes of 401 KAR 5:026 through 401 KAR 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.

(166) "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.

(167) "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.

(168) "Major industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including 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.

(169) "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.

(170) "Major outfall" means a major municipal separate storm sewer outfall.

(171) "Manmade" means constructed by humans.

(172) "Maximum allowable industrial loading" means the total mass of a pollutant that all industrial users of a POTW, or subgroup of an industrial users identified by the POTW, may discharge pursuant to limits developed under 401 KAR 5:057, Section 3(3).

(173) "Maximum daily discharge limitation" means the highest allowable daily discharge.

(174) ~~(173)~~ "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(175) ~~(174)~~ "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 1990 Decennial Census ~~[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.

(176) [(475)] "Metalimnion" means the region of the thermocline.

(177) [(476)] "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(178) [(477)] "mgd" or "MGD" means million gallons per day.

(179) [(478)] "mg/l" means milligrams per liter, same as ppm, assuming unit density.

(180) [(479)] "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.

(181) [(480)] "Minimum design volume" means the treatment volume in the lagoon necessary to maintain an anaerobic condition in the lagoon.

(182) [(481)] "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.

(183) [(482)] "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.

(184) [(483)] "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.

(185) "MS4" means a municipal separate storm sewer system.

(186) [(484)] "Municipal separate storm sewer" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to subsections (158), (175) and (283) of this section, or designated under 401 KAR 5:060, Section 12(1)(a)5, consisting of 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, 33 USC 128, 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.

(187) [(485)] "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].

(188) [(486)] "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.

(189) [(487)] "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.

(190) [(488)] "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.

merly called the Soil Conservation Service.

(191) [(489)] "Natural temperature" means, for purposes of 401 KAR 5:026 through 401 KAR 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.

(192) [(490)] "Natural water quality" means, for purposes of 401 KAR 5:026 through 401 KAR 5:031, those naturally occurring physical, chemical, and biological properties of waters.

(193) [(491)] "Net discharge" means, for purposes of 401 KAR 5:026 through 401 KAR 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.

(194) [(492)] "New discharger" means, for purposes of 401 KAR 5:050 to 401 KAR 5:080, any building, structure, facility or installation:

- (a)1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which has never received a finally effective NPDES or KPDES permit for discharges at that site; and
4. Which is not a new source.

(b) This definition includes an indirect discharger which commences discharging into the waters of the Commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit.

(195) [(493)] "New source" means:

(a) For purposes of 401 KAR 5:050 to 401 KAR 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.

tion 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.

(196) [(494)] "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including priority pollutants identified in 401 KAR 5:060.

(197) [(495)] "Nonpoint" means any source of pollutants not defined by a point source, as used in this chapter.

(198) [(496)] "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.

(199) [(497)] "NPDES" is defined in KRS 224.01-010.

(200) [(498)] "NRCS" means the Natural Resources Conservation Service.

(201) [(499)] "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.

(202) [(200)] "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.

(203) [(201)] "O&M" means operation and maintenance.

(204) [(202)] "Operate" means, for purposes of 401 KAR 5:090, any act relating to the construction, operation, or maintenance of any facility.

(205) [(203)] "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.

(206) [(204)] "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.

(207) [(205)] "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.

(208) [(206)] "Outstanding national resource water" means a surface water categorized by the cabinet as an outstanding national resource water pursuant to 401 KAR 5:030.

(209) [(207)] "Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 5:031.

(210) [(208)] "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.

(211) [(209)] "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.

(212) [(210)] "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.

(213) [(211)] "Package WWTP" means a factory-built WWTP which is transported to and assembled or set in place at the site.

(214) [(212)] "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.

(215) [(213)] "pCi/l" means picocuries per liter.

(216) [(214)] "PCR" means primary contact recreation.

(217) [(215)] "Permit" means:

(a) For purposes of 401 KAR 5:005 or 401 KAR 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 401 KAR 5:080, a KPDES permit.

(218) [(216)] "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.

(219) [(217)] "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

(220) [(218)] "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.

(221) [(219)] "POTW" means publicly-owned treatment works as defined in KRS 224.01-010.

(222) [(220)] "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.

(223) [(221)] "ppb" means parts per billion; assuming unit density, same as µg/l.

(224) [(222)] "ppm" means parts per million; assuming unit density, same as mg/l.

(225) [(223)] "Preexisting discharge" means any discharge that is occurring when applying for a KPDES permit under 401 KAR 5:029 or 401 KAR 5:040.

(226) [(224)] "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.

(227) [(225)] "Pretreatment requirement" means a substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(228) [(226)] "Pretreatment standard" means a national pretreatment standard.

(229) [(227)] "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(230) [(228)] "Primary industry category" means any industry category listed as being a primary industry in 401 KAR 5:060.

(231) [(229)] "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.

(232) [(230)] "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.

(233) [(231)] "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.

(234) [(232)] "Produced water" means all water, pollutants, and combinations thereof resulting, obtained, or produced from the exploration, drilling, or production of oil or gas.

(235) [(233)] "Productive aquatic community" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(236) [(234)] "Professional engineer" or "engineer" means a person registered to practice engineering pursuant to KRS Chapter 322.

(237) [(235)] "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).

(238) [(236)] "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.

(239) [(237)] "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.

(240) [(238)] "Public water system" shall have the meaning given it in 401 KAR 8:010.

(241) [(239)] "RCRA" means the Resource Conservation Recovery Act as amended (42 USC 6901 et seq.).

(242) [(240)] "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.

(243) [(241)] "Recommencing discharger" means a source which recommences discharge after terminating operations.

(244) [(242)] "Regional administrator" means the regional administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

(245) [(243)] "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.

(246) [(244)] "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.

(247) [(245)] "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.

(248) [(246)] "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.

(249) [(247)] "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.

(250) [(248)] "Remined area" means only that area of any coal

remining operation on which a coal mining operation was conducted before August 3, 1977.

(251) [(249)] "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.

(252) [(250)] "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.

(253) [(251)] "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.

(254) [(252)] "Requester" means any industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.

(255) [(253)] "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.

(256) [(254)] "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(257) [(255)] "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(258) [(256)] "SARA" means the Superfund Amendments and Reauthorization Act, as amended.

(259) [(257)] "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.

(260) [(258)] "SCR" means secondary contact recreation.

(261) [(259)] "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.

(262) [(260)] "Secondary industry category" means any industry category which is not a primary industry category.

(263) [(261)] "Secondary treatment" means that degree of treatment which results in an effluent quality which meets the minimum requirements of 401 KAR 5:045.

(264) [(262)] "Service area" means that geographic area currently being served by a regional facility.

(265) [(263)] "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.

(266) [(264)] "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.

(267) [(265)] "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.

(268) [(266)] "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.

(269) [(267)] "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.

(270) [(268)] "Sewer line extension" means a proposed con-



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struction project which extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

(271) ~~[(269)]~~ "Sewer system" means the network of sewer lines, pump stations, and force mains that discharge to a common WWTP.

(272) ~~[(270)]~~ "SIC" means standard industrial classification.

(273) ~~[(274)]~~ "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.

(274) ~~[(272)]~~ "Significant materials" means, but is not limited to, and for purposes of 401 KAR 5:050 to 401 KAR 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, 42 USC 9601; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers, 42 USC 11023; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.

(275) ~~[(273)]~~ "Silvicultural point source" means, for purposes of 401 KAR 5:050 to 401 KAR 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 non-point 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.

(276) ~~[(274)]~~ "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.

(277) ~~[(275)]~~ "Site" means, for purposes of 401 KAR 5:050 to 401 KAR 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.

(278) "SIU" means significant industrial user.

(279) ~~[(276)]~~ "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, 33 USC 1345, as amended; the Solid Waste Disposal Act (SWDA), as amended, including Title II, more commonly referred to as the Resource Conservation Recovery Act (RCRA), 42 USC 6901 et seq. and administrative regulations contained in any sludge management plan prepared pursuant to Subtitle D of SWDA, as amended; the Clean Air Act, 42 USC 7401 et seq., as amended; and the Toxic Substances Control Act, 15 USC 2601 et seq., as amended.

(280) ~~[(277)]~~ "SMCRA" means the Surface Mining Control and Reclamation Act, as amended, [43 USC 1201 et seq.]

(281) ~~[(278)]~~ "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.

(282) ~~[(279)]~~ "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.

(283) ~~[(280)]~~ "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.

(284) "Small municipal separate storm sewer system" means all municipal separate storm sewers that are:

(a) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to this administrative regulation, or designated in 401 KAR 5:060, Section 12(1)(a)5.

(b) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(285) "Small MS4" means a small municipal separate storm sewer system.

(286) ~~[(284)]~~ "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(287) ~~[(282)]~~ "SPCC" means spill prevention control and countermeasure.

(288) ~~[(283)]~~ "Standard" means:

(a) For purposes of 401 KAR 5:026, 401 KAR 5:029, 401 KAR 5:030 or 401 KAR 5:031, a water quality standard; or

(b) For purposes of 401 KAR 5:057, a pretreatment standard.

(289) ~~[(284)]~~ "Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

(290) ~~[(285)]~~ "Storm water discharge associated with industrial activity" means the discharge from any conveyance that ~~which~~ is used for collecting and conveying storm water and that ~~that~~ ~~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 final ~~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 purposes of this definition, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by product or waste product. ~~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 paragraphs (a) through (k) of this subsection, include those facilities designated under the provisions of 401 KAR 5:060, Section 12(1)(a)5. The following categories of facilities are considered to be engaging in an industrial activity for purposes of this definition ~~[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, 33 USC 1345;

(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. Construction activity also includes the disturbance of less than five (5) acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five (5) acres or more; [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, and 4221-4225 [and which are not otherwise included within categories of paragraphs (a) to (j) of this subsection];

(291) "Storm water discharge associated with small construction activity" means the discharge of storm water from:

(a) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than

one (1) and less than five (5) acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The cabinet may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five (5) acres where:

1. The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five (5) during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997 incorporated by reference in Section 3 of this administrative regulation. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S. 552(a) and 1 CFR part 51. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. SW, Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street SW, Washington, DC 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An operator must certify to the cabinet that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five (5); or

2. Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutants of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subparagraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the cabinet that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(b) Any other construction activity designated by the cabinet or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the Commonwealth.

(292) [(286)] "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.

(293) [(287)] "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.

(294) [(288)] "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.

(295) [(289)] "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

(296) [(290)] "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.

(297) [(294)] "SWDA" means the Solid Waste Disposal Act, as amended, [(42 USC 6901 et seq.)]

[(292)] "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.

(293) "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.

(294) "Swine waste" means the waste from a swine feeding operation, including manure, bedding, soil, wasted water and feed, and flushing water from swine confinement.

(295) "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.

(296) "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.

(297) "SWMP" means a swine waste management permit.

(298) "Tank battery" means an installation where oil is collected from wellheads and is separated from produced water.

(299) "TDS" means total dissolved solids.

(300) "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.

(301) "TMDL" means total maximum daily load.

(302) "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.

(303) "Total maximum daily load" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources.

(304) ~~(302)~~ "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.

(305) ~~(303)~~ "Toxic pollutant" means, for purposes of 401 KAR 5:050 to 401 KAR 5:080, any pollutant listed as being toxic in 401 KAR 5:080.

(306) ~~(304)~~ "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.

(307) "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership, including federal facilities, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge.

(308) ~~(305)~~ "Toxic substance" means a substance that is bio-accumulative, 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.

(309) ~~(306)~~ "TSS" means total suspended solids.

(310) ~~(307)~~ "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.

(311) ~~(308)~~ "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.

(312) "Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act, 33 USC 6901 et seq.

(313) ~~(309)~~ "Underground injection" means a well injection.

(314) ~~(310)~~ "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.

(315) ~~(311)~~ "USC" means United States Code.

(316) ~~(312)~~ "U.S. EPA" means the United States Environmental Protection Agency.

(317) ~~(313)~~ "USGS" means the United States Geological Survey.

(318) ~~(314)~~ "Use-protected water" means a surface water categorized as use protected by the cabinet pursuant to 401 KAR 5:030.

(319) ~~(315)~~ "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.~~

(320) ~~(316)~~ "WAH" means warm water aquatic habitat.

(321) ~~(317)~~ "Warm water aquatic habitat" or "WAH" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.

(322) ~~(318)~~ "Wastewater system" means a sewage system as defined in KRS 224.01-010.

(323) ~~(319)~~ "Wastewater treatment plant" or "WWTP" means a facility used for the treatment and disposal of sewage.

(324) ~~(320)~~ "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, 33 USC 1288 and 1313 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, 33 USC 1281, 1285j, 1288, and 1313e and 40 CFR Part 130.

(325) ~~(321)~~ "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.

(326) ~~(322)~~ "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 401 KAR 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.

(327) ~~(323)~~ "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.

(328) ~~(324)~~ "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.

(329) ~~(325)~~ "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.

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(330) [(326)] "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

(331) [(327)] "WWTP" means wastewater treatment plant.

(332) [(328)] "Zone" means a subsurface layer or stratum capable of producing or receiving fluids.

(333) [(329)] "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.

(334) [(330)] "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.

(335) [(334)] "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, 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, 2001 [4997], 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, 2001 [4998], 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 2001 [4997], U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and

(4) 40 CFR Part 130, "Water Quality Planning and Management," July 2001, 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) The following material is incorporated by reference:

(a) "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;

(b) "Combined Sewer Overflow Control Policy", 59 Fed. Reg. 18688, April 19, 1994; and

(c) "Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE)", Pages 21-64, January 1997, U.S. Department of Agriculture. [is incorporated by reference.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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

APPROVED BY AGENCY: May 6, 2002

FILED WITH LRC: May 9, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for June 25, 2002, 9:30 a.m. in the Franklin County Extension Office, 101 Lakeview Court, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by June 18, 2002, 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 provided 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 close of business on June 18, 2002 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: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey W. Pratt, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the definitions for terms used in the KPDES administrative regulations and other 401 KAR Chapter 5 administrative regulations.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS Chapter 13A. The cabinet must promulgate this administrative regulation in order to maintain a list of current definitions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation will provide definitions for 401 KAR Chapter 5 in the manner specified by KRS Chapter 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow the cabinet to use up-to-date definitions including those definitions that have been added or modified to the corresponding federal regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this administrative regulation: This amendment will add new definitions and modify existing definitions so as to make them compatible with the corresponding federal regulations located in 40 CFR and with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: If this administrative regulation is not amended as proposed, some of the definitions for 401 KAR Chapter 5 will continue to be outdated or missing.

(c) How the amendment conforms to the content of the authorizing statutes: The amended definitions adhere to the provisions of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: The various 401 KAR Chapter 5 administrative regulations which are promulgated pursuant to KRS Chapter 224 cannot be effectively applied without current definitions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all of the entities currently regulated by 401 KAR Chapter 5.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact of this administrative regulation will be non-existent because the corresponding federal definitions have already gone into effect and apply to all Kentucky facilities.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The first year, the cabinet will incur no additional costs.

(b) On a continuing basis: There will be no additional costs attributable to this amended administrative regulation.

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

401 KAR 5:055. Scope and applicability of the KPDES Program.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, ~~224.10-100, 224.16-050,~~ 224.70-100, 224.70-120, ~~224.70-140,~~ 224.99-010, 33 CFR Part 153, 40 CFR 122.21(n)(2), Part 300, 33 USC 1251 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-100, 33 CFR Part 153, 40 CFR 122.21(n)(2), Part 300, 33 USC 1251 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 provides that the Natural Resources and Environmental Protection Cabinet may require for persons discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224.16-050(1) provides that the cabinet may issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act, [43 USC Section 1251 et seq.] subject to the conditions imposed in 33 USC Sections 1342(b) and (d). [i] KRS 224.16-050(1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 USC Sections 1311, 1312, and 1326(a). Further, KRS 224.16-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other condition which would have been applicable under the federal regulation if the permit were issued by the federal government. This administrative regulation contains the scope and applicability of the KPDES program including specific inclusions and exclusions, prohibitions, requirements for general permits, ~~and~~ requirements for disposal into wells and [i] into publicly-owned treatment works (POTW) ~~(POTWS)~~ and disposal by land application.

Section 1. Applicability of the KPDES Requirements. The KPDES program requires a permit to ~~(permits for the)~~ discharge ~~(of)~~ pollutants from a point source into waters of the Commonwealth. ~~[Compliance with]~~ The KPDES program requires ~~(requirements constitute)~~ compliance with ~~(the operational permit requirements of)~~ 401 KAR 5:005, permits to construct, modify, or operate a facility, and the requirements related to the operational permit. Failure to obtain a KPDES permit shall ~~(does)~~ not relieve a discharger subject to the KPDES program from complying with the applicable performance standards of that program, 401 KAR 5:050 to 5:080, inclusive.

(1) Specific inclusions. The following ~~(are)~~ examples are ~~(of)~~ specific categories of point sources that require a KPDES permit to discharge ~~(requiring KPDES permits for discharges)~~. These terms are further defined in 401 KAR 5:002 ~~(5:004)~~.

- (a) Concentrated animal feeding operations;
- (b) Concentrated aquatic animal production facilities;
- (c) Discharges into aquaculture projects;
- (d) Discharges from separate storm sewers;
- (e) Silviculture point sources; and
- (f) Permits required on a case-by-case basis.

1. Various sections of 401 KAR 5:060 allow the cabinet to determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, storm water discharges, and ~~(certain)~~ other facilities covered by a general permit, ~~(that do not generally require an individual permit)~~ may be required to obtain an individual permit because of their contributions to water pollution.

2. If the cabinet decides that an individual permit is required under this section, except as provided in subparagraph 3 of this paragraph, the cabinet shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit under 401 KAR 5:060 within sixty (60) days of notice, unless permission for a later date is granted by the cabinet. The question whether the designation was proper shall remain open for consideration during the

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no change in the funding sources due to this amended administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied to this regulation since it merely defines terms that are used in other regulations in this chapter. Therefore, tiering is not applicable. The individual regulations 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 mandate that there be a definition regulation. Some terms that are in this regulation are the same as the federal regulations.

2. State compliance standards. The corresponding state regulations for the federal NPDES regulations are in 401 KAR 5:050 to 401 KAR 5:080, but are being amended to incorporate the federal changes to that program since 1994. Some of these new federal definitions are being incorporated into this regulation.

3. Minimum or uniform standards contained in the federal mandate. There are no specific standards, but the federal definitions occur in various places throughout the federal programs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, the additional and modified definitions match those found in the corresponding federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standards are being proposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect 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. This administrative regulation relates to those entities that operate facilities that discharge into waters of the Commonwealth.

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. No effect. This regulation merely defines terms. It does not impact the expenditures or revenues of any local government.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None



public comment period under 401 KAR 5:075 and in any subsequent hearing.

3. Prior to a case-by-case determination that an individual permit is required for a storm water discharge under 401 KAR 5:060, Section 12 the cabinet may require the discharger to submit a permit application or other information regarding the discharge under 401 KAR 5:060, Section 1(6). In requiring the information, the cabinet shall notify the discharger in writing and shall send an application form with the notice. The discharger shall apply for a permit under 401 KAR 5:060, Section 12 within sixty (60) days of notice, unless permission for a later date is granted by the cabinet. The question whether the initial designation was proper shall remain open for consideration during the public comment period under 401 KAR 5:075 and in any subsequent hearing pursuant to KRS 224.10-420(2).

(2) Specific exclusions. The following discharges do not require KPDES permits:

(a) Discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured in waters of the Commonwealth for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the Commonwealth which are regulated under CWA Section 404 (33 USC Section 1344).

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect discharges. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the Commonwealth are eliminated.

(d) Discharges in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR Part 153 (Pollution by Oil and Hazardous Substances), discharges in compliance with the state hazardous substance contingency plan issued pursuant to KRS 224.01-400, or discharges authorized by state on-scene coordinators in response to releases of hazardous substances, pollutants and contaminants or petroleum.

(e) Introduction of pollutants from nonpoint source agricultural and silvicultural activities, including storm water run-off from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the cabinet may otherwise require under 401 KAR 5:065, Section 2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act (42 USC Section 300f et seq.), and which are issued under a state or federal Underground Injection Control program; and, underground injections and disposal wells which are permitted by the cabinet pursuant to 401 KAR Chapter 5.

(i) Discharges which are not regulated by the U.S. EPA under CWA Section 402, [43 USC Section 1342(b)].

Section 2. Prohibitions. No permit shall be issued by the cabinet:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of KRS Chapter 224, or administrative regulations promulgated pursuant thereto;

(2) When the regional administrator has objected to issuance of the permit in writing under the procedures specified in 40 CFR Section 123.44;

(3) When the imposition of conditions cannot ensure compliance

with the applicable water quality requirements of Kentucky and all affected states;

(4) When, in the judgment of the secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For the discharge inconsistent with a water quality management plan or plan amendment approved by EPA; or

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Kentucky water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the KPDES administrative regulations and for which the cabinet has performed a pollutant load allocation for the pollutants to be discharged, shall demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(b) The existing dischargers into that segment are subject to schedules of compliance designed to bring the segment into compliance with Kentucky water quality standards. The cabinet may waive the submission of information by the new source or new discharger required by this subsection if the cabinet determines that the cabinet already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph shall be included in the fact sheet to the permit under 401 KAR 5:075, Section 4.

Section 3. Variance Requests by Non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under the following statutory or regulatory provisions within the times specified in this section:

(1) Fundamentally different factors. A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

(a) For a request from best practicable control technology currently available (BPT), by the close of the public comment period under 401 KAR 5:075.

(b) For a request from best available technology economically achievable (BAT) or best conventional pollutant control technology (BCT), by no later than:

1. July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated administrative regulations; or

2. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987. The request shall explain how the requirements of 401 KAR 5:080, Section 3, have been met.

(2) Nonconventional pollutants. A request for a variance from the BAT requirements for "nonconventional" pollutants, pursuant to Section 7(1) of this administrative regulation because of the economic capability of the owner or operator, or pursuant to Section 7(2) of this administrative regulation because of certain environmental considerations, shall be made as follows. A nonconventional pollutant variance shall be available only for ammonia; chlorine; color; iron; total phenols (4AAP), as determined by the U.S. EPA to be a pollutant covered by CWA, Section 301(b)(2)(F), 33 USC 1311(b)(2)(F); and any other pollutant which the U.S. EPA lists under CWA Section 301(g)(4), 33 USC 1311(g)(4).

(a) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

1. Submitting an initial request to the cabinet stating the name of the discharger, the permit number, the outfall number, the applicable effluent guideline, and whether the discharger is requesting a modification under Section 7(1) or (2) of this administrative regulation or both Section 7(1) and (2) of this administrative regulation. This re-



quest shall have been filed not later than:

a. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

b. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 17, 1977; and

2. Submitting a completed request no later than the close of the public comment period under 401 KAR 5:075, Section 5 demonstrating that the requirements of 401 KAR 5:075, Section 8 and the applicable requirements of 401 KAR 5:080 have been met. Notwithstanding this provision, the complete application for a request under Section 7(2) of this administrative regulation shall be filed 180 days before a decision is desired.

(b) For those requests for a variance from effluent limitation guidelines, the request need only comply with paragraph (a)2 of this subsection and need not be preceded by an initial request under paragraph (a)1 of this subsection.

(3) Delay in construction of POTW. An extension under CWA Section 301(i)(2), 33 USC 1311(i)(2) of the statutory deadlines in Section 301(b)(1)(A) or (b)(1)(C) of the CWA, 33 USC 1311(b)(1)(A) or (C) based on delay in completion of a POTW into which the source is to discharge shall have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under 40 CFR 122.21(n)(2) whichever is later, but not later than January 30, 1988. ~~[The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.]~~

(4) Innovative technology. An extension under Section 7(3) of this administrative regulation from the deadline in 401 KAR 5:080, Section 1, for best available technology (BAT) or for best conventional pollutant control technology (BCT), based on the use of innovative technology, shall be requested no later than the close of the public comment period under 401 KAR 5:075, Section 5, for the discharger's initial permit requiring compliance with applicable effluent limitations. The request shall demonstrate that the requirements of 401 KAR 5:080 have been met.

(5) Thermal discharges. A variance under Section 7(4) of this administrative regulation for the thermal component of a discharge shall be filed with a timely application for a permit under 401 KAR 5:060, except that if thermal effluent limitations are established by EPA or are based on Kentucky water quality standards the request for a variance shall be filed by the close of the public comment period under 401 KAR 5:075, Section 5.

Section 4. Expedited Variance Procedures and Time Extensions. Notwithstanding the time requirements in Section 3 of this administrative regulation, the cabinet may notify a permit applicant before a draft permit is issued under 401 KAR 5:075, Section 3, that the draft permit will likely contain limitations which are eligible for variances.

(1) In the notice the cabinet may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 401 KAR 5:080 applicable to the variance have been met. The cabinet may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which shall become effective upon final grant of the variance.

(2) A discharger who cannot file a complete request required under Section 3(2) of this administrative regulation may request an extension. The extension may be granted or denied by the cabinet. Extensions shall be no more than six (6) months in duration.

Section 5. General Permits. (1) Coverage. The cabinet shall issue a general permit in accordance with the following:

(a) Area. The general permit shall be written to cover one (1) or more categories or subcategories [a category] of discharges described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

1. Designated planning areas under CWA Sections 208 and 303, [43 USC Sections 1288 and 1313];
2. City, county, or state political boundaries;
3. State highway systems;

4. Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget;

5. Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census; or

6. Other appropriate division or combination of boundaries.

(b) Sources. The general permit shall be written to regulate, within the area described in paragraph (a) of this subsection, either:

1. Storm-water point sources; or

2. One (1) or more categories or subcategories of point sources other than storm water point sources, or one (1) or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory [A category of point sources other than storm water point sources if the sources] all:

a. Involve the same or substantially similar types of operations;

b. Discharge the same types of wastes;

c. Require the same effluent limitations or operating conditions;

d. Require the same or similar monitoring; and

e. In the opinion of the cabinet, are more appropriately controlled under a general permit than under individual permits.

(c) Water quality-based limits. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to 401 KAR 5:065, Section 2(4), the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

(d) Other requirements.

1. The general permit shall clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

2. The general permit may exclude specified sources or areas from coverage.

(2) Administration.

(a) General permits shall be issued, modified, revoked and reissued, or revoked in accordance with applicable requirements of 401 KAR 5:075.

(b) Requiring an individual permit.

1. The cabinet may require any person authorized to discharge by a general permit to apply for and obtain an individual KPDES permit. Interested person may petition the cabinet to take action under this paragraph. An individual KPDES permit may be required if:

a. The discharger is not in compliance with the conditions of the general KPDES permit;

b. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

c. Effluent limitation guidelines are promulgated for point sources covered by the general KPDES permit;

d. A Kentucky Water Quality Management Plan containing requirements applicable to these point sources is approved; or

e. The requirements of subsection (1) of this section are not met.

2. An owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 401 KAR 5:060, Section 1, to the cabinet with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the cabinet in accordance with 401 KAR 5:075, Section 5. The request shall be processed under 401 KAR 5:075. If the reasons cited by the owner or operator are adequate to support the request, the cabinet may issue an individual permit.

3. When an individual KPDES permit is issued to an owner or operator otherwise subject to a general KPDES permit, the applicability of the general permit to the individual KPDES permittee is automatically revoked on the effective date of the individual permit.

4. A permittee, excluded from a general permit solely because the permittee already has an individual permit, may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

Section 6. Disposal of Pollutants into Wells, into POTWs or by Land Application. (1) The cabinet may issue permits to control the disposal of pollutants into wells, when necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.

(2) If part of a discharger's process wastewater is not being discharged into waters of the Commonwealth because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the Commonwealth, applicable effluent standards and limitations for the discharge in a KPDES permit shall be adjusted to reflect the reduced raw waste resulting from this disposal. Effluent limitations and standards in the permit shall be calculated by one (1) of the following methods:

(a) If none of the waste from a particular process is discharged into waters of the Commonwealth, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(b) In all cases other than those described in paragraph (a) of this subsection, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater now to be treated and discharged into waters of the Commonwealth, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 401 KAR 5:080, Section 3, to make them more stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method shall be algebraically expressed as:

$$P = E \times N / T$$

When P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the Commonwealth and T is the total wastewater flow.

(3) Subsection (2) of this section shall not apply to the extent that promulgated effluent limitations guidelines:

(a) Control concentrations of pollutants discharged but not mass; or

(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(4) Subsection (2) of this section does not alter a discharger's obligation to meet more stringent requirements established under 401 KAR 5:065.

Section 7. Variances Available to KPDES Applicants. Consistent with KRS 224.16-050, the variance provisions in this section and in 401 KAR 5:080, Sections 3 and 4, lists, inclusively, those variances available to KPDES applicants.

(1) Economic capability. The cabinet, with the concurrence of EPA, may modify the BAT requirements set out in 401 KAR 5:080, Section 1, for a point source, upon a showing by the owner or operator of that point source, satisfactory to the cabinet that the modified requirement will:

(a) Represent the maximum use of technology within the economic capability of the owner or operator; and

(b) Result in reasonable further progress toward the elimination of the discharge of pollutants.

(2) Environmental considerations.

(a) The cabinet, with the concurrence of EPA, may modify the BAT requirement set out in 401 KAR 5:080, Section 1, for a point source which does not discharge toxic pollutants identified in 401 KAR 5:080, Section 6, conventional pollutants, or the thermal component of that discharge upon a showing by the owner or operator satisfactory to the cabinet that:

1. The modified requirement will result, at a minimum, in compliance with the BPT requirement identified in 401 KAR 5:080 or Kentucky water quality standards, whichever is applicable;

2. The modified requirement will not result in any additional requirement on any other point or nonpoint source; and

3. The modification will not:

a. Interfere with the attainment or maintenance of that water quality which will assure protection of public water supplies, protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water; and

b. Result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, including carcinogenicity, mutagenicity or teratogenicity, or synergistic propensities.

(b) If an owner or operator of a point source applies for a modification under this section for a pollutant, that owner or operator shall be eligible to apply for a modification under subsection (1) of this section with respect to that pollutant only during the same time period as he is eligible to apply for a modification under this section.

(3) Innovative technology.

(a) The cabinet shall establish a date for complying with the deadline for achieving BAT set out in 401 KAR 5:080, Section 1, no later than two (2) years after the date for compliance with the effluent limitation which would otherwise be applicable, if the owner or operator establishes to the satisfaction of the cabinet the following:

1. That the existing production capacity of the facility will be replaced with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to that facility, and which moves toward the state's goal of eliminating the discharge of all pollutants; or

2. That an innovative control technique will be installed which has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation, and which moves toward the state's goal of eliminating the discharge of all pollutants; or

3. That an innovative system will be installed which has the potential for significantly lower costs than the system which has been determined by the cabinet to be economically achievable.

(b) The innovative system shall have the potential for industry-wide application.

(c) The cabinet shall not modify any requirement under this section which applies to a pollutant on the toxic pollutant list set out at 401 KAR 5:080, Section 6.

(d) The cabinet may include any of the following conditions in the permit of a discharger to which a compliance extension beyond the otherwise applicable compliance date is granted:

1. A requirement that the discharger report annually on the installation, operation, and maintenance costs of the innovative technology; or

2. Alternative BAT limitations that the discharger shall meet as soon as possible and not later than two (2) years after the date for compliance with the effluent limitation which would otherwise be applicable if the innovative technology limitations that are more stringent than BAT are not achievable.

(4) Thermal pollution.

(a) The cabinet may impose an alternative effluent limitation for the thermal component of a discharge from a point source if the owner or operator can establish to the satisfaction of the cabinet that the original effluent limitation proposed by the cabinet is more stringent than necessary to assure the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge will be made.

(b) The alternative effluent limitation imposed by the cabinet upon request by the owner or operator shall take into account the interaction of the thermal component with other pollutants, and shall assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on that body of water.

Section 8. 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, 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) 33 CFR Part 153, "Pollution by Oil and Hazardous Substances", as in effect on July 1, 2001 for the description of emergency discharges exempt from KPDES permit requirements;

(2) 40 CFR 122.21(n)(2), "Permit compliance extensions al-

lowed for delays in construction of POTW", as in effect on July 1, 2001 for permit extensions as referenced in Section 3(3) of this administrative regulation; and

(3) 40 CFR Part 300, "The National Oil and Hazardous Substances Pollution Contingency Plan", as in effect on July 1, 2001 for the description of emergency dischargers exempt from KPDES permit requirements.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: May 6, 2002

FILED WITH LRC: May 9, 2002 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation is scheduled for June 25, 2002, 9:30 a.m. in the Franklin County Extension Office, 101 Lakeview Court, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by June 18, 2002, 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 provided 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 close of business on June 18, 2002 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:** Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey W. Pratt, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a broad listing of entities that are regulated by the KPDES permit program.

(b) The necessity of this administrative regulation: This administrative regulation was needed because all NPDES delegated states must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the scope of a wastewater discharge permit program, which implements the pollution prevention goals of KRS Chapter 224.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides a description of the type of entity that is regulated by the other KPDES regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this administrative regulation: This amendment will correct and update the regulation to make it compatible with the corresponding federal regulation.

(b) The necessity of the amendment to this administrative regulation: If this administrative regulation is not amended as proposed the state regulation will continue to be incompatible with the corresponding federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation still provides for water pollution control as authorized under KRS Chapter 224.

(d) How the amendment will assist in the effective administration of the statutes: The corrected and updated regulation will be compatible with the corresponding federal regulations which will aid in carrying out the goals of KRS Chapter 224.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative

regulation: This administrative regulation will apply to over 10,000 permitted entities which include individuals, businesses and governmental organizations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact of this administrative regulation will be non-existent because the new requirements went into effect when the corresponding federal regulations were adopted.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The first year, the cabinet will incur no additional costs.

(b) On a continuing basis: There will be no additional costs attributable to this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no change in the funding sources due to this amended administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. To the extent that the corresponding federal regulations provided for tiering, these amendments are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to obtain delegation of the federal NPDES permit program.

2. State compliance standards. This regulation amendment establishes state standards that are the same as the corresponding federal standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, this regulation does not establish any requirements stricter than that established by the corresponding federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standards are being proposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect 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. This administrative regulation relates to those entities that operate facilities that discharge into waters of the Commonwealth.

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. None; since this regulation amendment merely provides for compatibility with corresponding federal regulations that have already gone into effect.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

**401 KAR 5:057. KPDES pretreatment requirements.**

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.10-100, 224.10-210, 224.16-050, 224.70-100, 224.70-120, 224.70-140, 224.99-010, 40 CFR 1.25(e), 25, 130, 131, 136, 258, 261, Chapter I, Subchapter N, 401 et seq., 403 Appendices A, D, 503, 33 USC 1251 et seq., 1288, 1314(h), 1317(d), 1319(c)(4), (6), 1370, 1718, 1919(f), 42 USC 6901 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, 224.73-120, 224.10-140, 40 CFR 1.25(e), 25, 130, 131, 136, 258, 261, Chapter I, Subchapter N, 401 et seq., 403 Appendices A, D, 503, 33 USC 1251 et seq., 1288, 1314(h), 1317(d), 1319(c)(4), (6), 1342, 1370, 42 USC 6901 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation implements Sections 204(b)(1)(c), 208(b)(2)(c)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(h)(5) and 301(i)(2), 304(e) and (g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act of 1977 (PL 95-217) or "the Act." It establishes responsibilities of the Commonwealth of Kentucky, local government, industry, and the public to implement the national pretreatment program to control pollutants which pass through or interfere with treatment processes in publicly owned treatment works (POTWs) or which may contaminate sewage sludge. Its objectives are to prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; to prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with the treatment works; and to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

Section 1. Applicability. (1) This administrative regulation shall apply to:

(a) Pollutants from nondomestic sources which are directly or indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs;

(b) POTWs which receive wastewater from sources subject to national pretreatment standards; and

(c) New or existing sources subject to pretreatment standards.

(2) This administrative regulation shall not apply to sources which lawfully discharge to a sewer which is not connected to a POTW treatment plant.

Section 2. Local Law. Nothing in this administrative regulation is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as local requirements are not less stringent than those set forth in state or national pretreatment standards, or other requirements or prohibitions established under the Act or this administrative regulation.

Section 3. Pretreatment Standards: Prohibited Discharges.

(1)(a) General prohibition. A user may not introduce into a POTW any pollutant which causes pass-through or interference. This general prohibition and the specific prohibitions in subsection (2) of this section shall apply to each user introducing pollutants into a POTW whether or not the user is subject to other national pretreatment standards or national or local pretreatment requirements.

(b) Affirmative defenses. A user shall have an affirmative defense in action brought against it alleging a violation of the general prohibitions established in paragraph (a) of this subsection and the specific prohibitions in subsection (2) of this section if the user demonstrates that:

1. It did not know or have reason to know that its discharge, alone or in conjunction with discharges from other sources, would

cause pass-through or interference; and

2.a. A local limit designed to prevent pass-through or interference was developed in accordance with subsection (3) of this section for each pollutant in the user's discharge that caused pass-through or interference, and the user was in compliance with each local limit directly prior to and during the pass-through or interference; or

b. If a local limit designed to prevent pass-through or interference has not been developed in accordance with subsection (3) of this section for the pollutant that caused the pass-through or interference, the user's discharge directly prior to and during the pass-through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's KPDES permit requirements and, if the violation was interference, was in compliance with applicable requirements for sewage sludge use or disposal.

(2) Specific prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

(a) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit (°F) or sixty (60) degrees Celsius (°C) using the test methods specified in 40 CFR 261.21;

(b) Pollutants which may cause corrosive structural damage to the POTW, but no discharges with pH lower than five and zero-tenths (5.0), unless the POTW is specifically designed to accommodate the discharges;

(c) Solid or viscous pollutants in amounts which would cause obstruction to the flow in the POTW resulting in interference;

(d) Pollutants, including oxygen demanding pollutants (biochemical oxygen demand (BOD), etc.) released in a discharge at a flow rate or pollutant concentration which would cause interference with the POTW;

(e) Heat in amounts which would inhibit biological activity in the POTW resulting in interference, but no heat in quantities such that the temperature at the POTW treatment plant exceeds forty (40) °C (104 °F) unless the cabinet, upon request of the POTW, approves alternate temperature limits;

(f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that would cause interference or pass-through;

(g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quality that may cause acute worker health and safety problems; or

(h) Trucked or hauled pollutants, except at discharge points designated by the POTW.

(3) The POTW shall develop specific limits under the following conditions:

(a) Each POTW developing a pretreatment program pursuant to Section 6 of this administrative regulation shall develop and enforce specific limits to implement the prohibitions listed in subsections (1) and (2) of this section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce the limits.

(b) All other POTWs, if pollutants contributed by users result in interference or pass-through, and the violation is likely to recur, shall develop and enforce specific limits for industrial users, and all other users as appropriate, which, together with appropriate changes in the POTW's treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's KPDES permit or sludge use or disposal practices.

(c) Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested these notices and had an opportunity to respond.

(4) Local limits. If specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with subsection (3) of this section, the limits shall be deemed pretreatment standards for the purposes of Section 307(d) of the Act, 33 USC Sec. 1317(d).

(5) EPA and cabinet enforcement actions under Section 309(f) of the Clean Water Act, 33 USC Sec. 1319(f). If, within thirty (30) days after notice of an interference or pass-through violation has been sent by EPA or the cabinet to the POTW and the persons or groups who have requested these notices, the POTW fails to com-

mence appropriate enforcement action to correct the violations, EPA or the cabinet may take appropriate enforcement action under the authority provided in Section 309(f) of the Act.

**Section 4. National Pretreatment Standards: Categorical Standards.** National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories are established as separate federal regulations under the appropriate subpart of 40 CFR Chapter I, Subchapter N. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this administrative regulation.

(1) Category determination request.

(a) Application deadline. Within sixty (60) days after the effective date of a pretreatment standard for a subcategory under which an industrial user may be included, the industrial user or POTW may request that the cabinet provide written certification on whether the industrial user falls within that particular subcategory. If an existing industrial user adds or changes a process or operation which may be included in a subcategory, the existing industrial user shall request this certification prior to commencing discharge from the added or changed processes or operation. A new source shall request this certification prior to commencing discharge. If a request for certification is submitted by a POTW, the POTW shall notify affected industrial users of the submission. The industrial user may provide written comments on the POTW submission to the cabinet, within thirty (30) days of notification.

(b) Contents of application. Each request shall contain a statement:

1. Describing which subcategories might be applicable; and
2. Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. The person signing the application statement submitted pursuant to this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) Deficient requests. The cabinet shall act only on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions shall be notified by the cabinet that their requests are deficient and, unless the time period is extended, will be given thirty (30) days to correct the deficiency. If the deficiency is not corrected within thirty (30) days or within an extended period allowed by the cabinet, the request for a determination shall be denied.

(d) Final decision.

1. If the cabinet receives a submittal the cabinet shall, after determining that it contains all of the information required by paragraph (b) of this subsection, consider the submission, additional evidence that may have been requested, and other available information relevant to the request. The cabinet shall then make a written determination of the applicable subcategory and state the reasons for the determination.

2. If the request is submitted to the cabinet, the cabinet shall forward the determination described in this paragraph to EPA which may make a final determination. EPA may waive receipt of these determinations. If EPA does not modify the cabinet's decision within sixty (60) days after receipt thereof, or if EPA waives receipt of the determination, the cabinet's decision shall be final.

3. If the request is submitted by the industrial user or POTW to EPA or if EPA elects to modify the cabinet's decision, EPA's decision shall be final.

4. EPA or the cabinet, as appropriate, shall send a copy of the determination to the affected industrial user and the POTW. If the final determination is made by EPA, EPA shall send a copy of the determination to the cabinet.

(e) Requests for hearing or legal decision. Within thirty (30) days following the date of receipt of notice of the final determination as provided for by paragraph (d) of this subsection, the requester may submit a petition to reconsider or contest the decision to the EPA regional administrator who shall act on the petition expeditiously and state the reasons for the determination in writing.

(2) Deadline for compliance with categorical standards. Compliance by existing sources with categorical pretreatment standards shall be within three (3) years of the date the standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR Chapter I, Subchapter N. Direct dischargers with KPDES permits modified or reissued to provide a variance pursuant to Section 301(i)(2) of the Act, 33 USC 1311(i)(2) shall meet compliance dates set in applicable categorical pretreatment standards. Existing sources which become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users unless the sources meet the definition of a new source. New sources shall install and have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time, not to exceed ninety (90) days, new sources shall meet all applicable pretreatment standards.

(3)(a) Concentration and mass limits. Pollutant discharge limits in categorical pretreatment standards shall be expressed either as concentration or mass limits. If possible, if concentration limits are specified in standards, equivalent mass limits will be provided so that local, cabinet, or federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical pretreatment standards shall apply to the effluent of the process regulated by the standard, or as otherwise specified by the standard.

(b) If the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the control authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users.

(c) A control authority calculating equivalent mass per day limitations under paragraph (b) of this subsection shall calculate the limitations by multiplying the limits in the standard by the industrial user's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the industrial user's actual long term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

(d) A control authority calculating equivalent concentration limitations under paragraph (b) of this subsection shall calculate the limitations by dividing the mass limitations derived under paragraph (c) of this subsection by the average daily flow rate of the industrial user's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the industrial user's actual long term average flow rate, such as the average daily flow rate during the representative year.

(e) Equivalent limitations calculated in accordance with paragraphs (c) and (d) of this subsection shall be deemed pretreatment standards for the purposes of Section 307(d) of the Act, 33 USC 1317(d) and this administrative regulation. Industrial users shall comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

(f) Many categorical pretreatment standards specify one (1) limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four (4) day average, limitations. If these standards are being applied, the same production of flow figure shall be used in calculating both types of equivalent limitations.

(g) Industrial users operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the control authority within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. A user not notifying the control authority of an anticipated change shall meet the mass or concentration limits in its



control mechanism that were based on the original estimate of the long term average production rate.

(4) Dilution prohibited as substitute for treatment. Unless expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water, or in other ways attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The control authority may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases if the imposition of mass limitations is appropriate.

(5) Combined waste stream formula. If process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the control authority, or by the industrial user with the written concurrence of the control authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum values specified in the appropriate categorical pretreatment standards and an alternative consecutive sampling day average value using the monthly average values specified in the appropriate categorical pretreatment standards. The industrial user shall comply with the alternative daily maximum and monthly average limits fixed by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification is authorized if there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An industrial user shall immediately report the material or significant changes to the control authority. If appropriate, new alternative categorical limits shall be calculated within thirty (30) days.

(a) Alternative limit calculation. Either of the formulas in subparagraph 2 or 3 of this paragraph shall be used for deriving an alternative limit for a specified pollutant.

1. The average daily flow ( $F_D$ ) shall be a reasonable measure of the average daily flow for a thirty (30) day period from the following sources; for new sources, flows shall be estimated using projected values:

a. Boiler blowdown streams, noncontact cooling streams, storm water streams, and demineralizer backwash streams. However, if these streams contain a significant amount of a pollutant, and the combination of these streams, prior to treatment, with an industrial user's regulated process waste streams will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may determine whether these streams should be classified as diluted or unregulated. In its application to the control authority, the industrial user shall provide engineering, production, sampling and analysis and other information necessary so that the control authority is able to make its determination;

b. Sanitary waste streams that are not regulated by a categorical pretreatment standard; or

c. From process waste streams which were or could have been entirely exempted from categorical pretreatment standards by the U.S. EPA for one (1) or more of the following reasons, and are listed in 40 CFR Part 403, Appendix D:

(i) The pollutants of concern are not detectable in the effluent from the industrial user;

(ii) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;

(iii) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the U.S. EPA administrator; or

(iv) The waste stream contains only pollutants which are compatible with the POTW.

2. Alternative concentration limit.

$$C_T = \left[ \frac{\sum_{i=1}^N C_i F_i}{\sum_{i=1}^N F_i} \right] \left[ \frac{F_T - F_D}{F_T} \right]$$

where:

$C_T$  = the alternative concentration limit for the combined waste stream.

$C_i$  = the categorical pretreatment standard concentration limit for a pollutant in the regulated stream i.

$F_i$  = the average daily flow, at least a thirty (30) day average, of stream i to the extent that it is regulated for the pollutant.

$F_D$  = the average daily flow, at least a thirty (30) day average, from subparagraph 1 of this paragraph.

$F_T$  = the average daily flow, at least a thirty (30) day average, through the combined treatment facility, including  $F_i$ ,  $F_D$  and unregulated streams.

$N$  = the total number of regulated streams.

3. Alternative mass limit.

$$M_T \left[ \frac{\sum_{i=1}^N M_i}{\sum_{i=1}^N F_i} \right] \left[ \frac{F_T - F_D}{F_T} \right]$$

where:

$M_T$  = the alternative mass limit for a pollutant in the combined waste stream.

$M_i$  = the categorical pretreatment standard mass limit for a pollutant in the regulated stream i, or the categorical pretreatment mass limit multiplied by the appropriate measure of production.

$F_i$  = the average flow, at least a thirty (30) day average, of stream i to the extent that it is regulated for the pollutant.

$F_D$  = the average daily flow, at least a thirty (30) day average, from subparagraph 1 of this paragraph.

$F_T$  = the average daily flow, at least a thirty (30) day average, through the combined treatment facility, including  $F_i$ ,  $F_D$  and unregulated streams.

$N$  = the total number of regulated streams.

(b) Alternate limits below detection limit. An alternative pretreatment limit from paragraph (a) of this subsection shall not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.

(c) Self-monitoring. Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements set forth in Section 9 of this administrative regulation.

(d) Choice of monitoring location. If a treated regulated process waste stream is combined prior to treatment with wastewaters other than those generated by the regulated process, the industrial user may monitor either the segregated process waste stream or the combined waste stream for the purpose of determining compliance with applicable pretreatment standards. If the industrial user chooses to monitor the segregated process waste stream, it shall apply the applicable categorical pretreatment standard. If the user chooses to monitor the combined waste stream, it shall apply an alternative discharge limit calculated using the combined waste stream formula as provided in this section. The industrial user may change monitoring points only after receiving approval from the control authority. The control authority shall ensure that a change in an industrial user's monitoring points will not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

Section 5. Removal Credits. (1)(a) General. Any POTW receiving wastes from an industrial user to which a categorical pretreatment standard [standards] applies may, subject to the conditions of this section, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical pretreatment standards. The POTW may grant a removal credit equal to or less than its consistent removal rate. Upon being granted a removal credit, each affected industrial user shall calculate its revised discharge limits in accordance with paragraph (c) of this subsection. Removal credits may be given only for indicator or surrogate pollutants regulated in a categorical pretreatment standard if the categorical pretreatment



standard so specifies.

(b) Conditions for authorization to give removal credits. A POTW may give removal credits only if the following conditions are met:

1. Application. The POTW applies for, and receives, authorization from the cabinet to give a removal credit in accordance with the requirements and procedures specified in subsection (5) of this section.

2. Consistent removal determination. The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with subsection (2) of this section.

3. POTW local pretreatment program. The POTW has an approved pretreatment program in accordance with and to the extent required by this administrative regulation; except, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in subsection (4) of this section.

4. Sludge requirements. The granting of removal credits will not cause the POTW to violate KRS Chapter 224 and administrative regulations promulgated pursuant thereto, or the local and federal sludge requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW may demonstrate to the cabinet that even though it is not presently in compliance with applicable sludge requirements, it will be in compliance when the industrial users to whom the removal credit would apply are required to meet their categorical pretreatment standards as modified by the removal credit. If granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal credits, the additional sludge management costs shall not be eligible for EPA grant assistance. Removal credits may be made available for the following pollutants:

a.(i) For any of the pollutants listed in this clause for the use or disposal practice employed by the POTW when the requirements in 40 CFR Part 503 are met:

Pollutants	Use or Disposal Practice		
	LA <sup>1</sup>	SD <sup>2</sup>	I <sup>3</sup>
Arsenic	X	X	X
Beryllium			X
Cadmium	X		X
Chromium	X	X	X
Copper	X		
Lead	X		X
Mercury	X		X
Molybdenum	X		
Nickel	X	X	X
Selenium	X		
Zinc	X		
Total hydrocarbons, if the hydrocarbon is listed below.			X

where:

LA - Land application;

SD - Surface disposal site without a liner and leachate collection system; and

I - Firing of sewage sludge in a sewage sludge incinerator.

(ii) The following organic pollutants are eligible for a removal credit if the requirements for total hydrocarbons in 40 CFR Part 503, Subpart E are met when sewage sludge is fired in a sewage sludge incinerator:

- i. Acrylonitrile;
- ii. Aldrin or dieldrin, or both (Total);
- iii. Benzene;
- iv. Benzidine;
- v. Benzo(a)pyrene;
- vi. Bis(2-chloroethyl)ether;
- vii. Bis(2-ethylhexyl)phthalate;
- viii. Bromodichloromethane;
- ix. Bromoethane;
- x. Bromoform;
- xi. Carbon tetrachloride;
- xii. Chlordane;
- xiii. Chloroform;
- xiv. Chloromethane;
- xv. DDD, DDE, DDT;
- xvi. Dibromochloromethane;

- xvii. Dibutyl phthalate;
- xviii. 1,2-dichloroethane;
- xix. 1,1-dichloroethylene;
- xx. 2,4-dichlorophenol 1,3-dichloropropene;
- xxi. Diethyl phthalate;
- xxii. 2,4-dinitrophenol;
- xxiii. 1,2-diphenylhydrazine;
- xxiv. Di-n-butyl phthalate;
- xxv. Endosulfan;
- xxvi. Endrin;
- xxvii. Ethylbenzene;
- xxviii. Heptachlor;
- xxix. Heptachlor epoxide;
- xxx. Hexachlorobutadiene;
- xxxi. Alpha-hexachlorocyclohexane;
- xxxii. Betahexachlorocyclohexane;
- xxxiii. Hexachlorocyclopentadiene;
- xxxiv. Hexachloroethane;
- xxxv. Hydrogen cyanide;
- xxxvi. Isophorone;
- xxxvii. Lindane;
- xxxviii. Methylene chloride;
- xxxix. Nitrobenzene;
- xl. N-Nitrosodimethylamine;
- xli. N-Nitrosodi-n-propylamine;
- xlil. Pentachlorophenol;
- xlili. Phenol;
- xliv. Polychlorinated biphenyls;
- xlvi. 2,3,7,8-tetrachlorodibenzo-p-dioxin;
- xlvi. 1,1,2,2-tetrachloroethane;
- xlvi. Tetrachloroethylene;
- xlvi. Toluene;
- li. Toxaphene;
- i. Trichloroethylene;
- li. 1,2,4-Trichlorobenzene;
- lii. 1,1,1-Trichloroethane;
- liii. 1,1,2-Trichloroethane; and
- liv. 2,4,6-Trichlorophenol.

b. For any of the additional pollutants listed below for the use or disposal practice employed by the POTW when the concentration for a pollutant listed below in the sewage sludge that is used or disposed does not exceed the given concentration for that pollutant in milligrams per kilogram, dry weight basis.

Pollutant	Use or Disposal Practice			
	LA	SD		I
		Un-lined <sup>1</sup>	Lined <sup>2</sup>	
Arsenic			<sup>3</sup> 100	
Aldrin or Dieldrin or both (Total)	2.7			
Benzene	<sup>3</sup> 16	140	3400	
Benzo(a)pyrene	15	<sup>3</sup> 100	<sup>3</sup> 100	
Bis(2-ethylhexyl)phthalate		<sup>3</sup> 100	100	
Cadmium		<sup>3</sup> 100	<sup>3</sup> 100	
Chlordane	86	<sup>3</sup> 100	<sup>3</sup> 100	
Chromium			<sup>3</sup> 100	
Copper		<sup>3</sup> 46	<sup>3</sup> 100	1400
DDD, DDE, DDT (Total)	1.2	2000	2000	
2,4 Dichlorophenoxy-acetic acid		7	7	
Fluoride	730			
Heptachlor	7.4			
Hexachlorobenzene	29			
Hexachlorobutadiene	600			
Iron	<sup>3</sup> 78			
Lead		<sup>3</sup> 100	<sup>3</sup> 100	
Lindane	84	<sup>3</sup> 28	<sup>3</sup> 28	
Malathion		0.63	0.63	
Mercury		<sup>3</sup> 100	<sup>3</sup> 100	
Molybdenum		40	40	
Nickel			<sup>3</sup> 100	
N-Nitrosodimethylamine	2.1	0.088	0.088	

Pentachlorophenol	30			
Phenol		82	82	
Polychlorinated biphenyls	4.6	<50	<50	
Selenium		4.8	4.8	4.8
Toxaphene	10	<sup>2</sup> 26	<sup>2</sup> 26	
Trichloroethylene	<sup>3</sup> 10	9500	<sup>3</sup> 10	
Zinc		4500	4500	4500

where:

- LA - Land application;
- SD - Surface disposal;
- I - Incineration;
- <sup>1</sup> - Sewage sludge unit without a liner and leachate collection system;
- <sup>2</sup> - Sewage sludge unit with a liner and leachate collection system; and
- <sup>3</sup> - Value expressed in grams per kilogram, dry weight basis.

c. For any pollutant in sewage sludge when the POTW disposes all of its sewage sludge in a municipal solid waste landfill unit that meets the criteria in 40 CFR Part 258.

5. KPDES permit limitations. The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW may demonstrate to the cabinet that even though it is not presently in compliance with applicable limitations and conditions in its KPDES permit, it will be in compliance when the industrial users to whom the removal credit would apply are required to meet their categorical pretreatment standards, as modified by the removal credit provision.

(c) Calculation of revised discharge limits. Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1-r}$$

where:

- x = pollutant discharge limit specified in the applicable categorical pretreatment standard;
- r = removal credit for that pollutant as established under subsection (2) of this section; percentage removal expressed as a proportion; i.e., a number between zero and one (1); and
- y = revised discharge limit for the specified pollutant, expressed in same units as x.

(2) Establishment of removal credits; demonstration of consistent removal.

(a) Consistent removal. Consistent removal shall be the average of the lowest fifty (50) percent of the removal measured according to paragraph (b) of this subsection. All sample data obtained for the measured pollutant during the time period prescribed in paragraph (b) of this subsection shall be reported and used in computing consistent removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW subject to approval by the cabinet. If the substance is not measurable in the influent, the data shall not be used. If the number of samples with concentrations equal to or above the limit of measurement is between eight (8) and twelve (12), the average of the lowest six (6) removals shall be used. If there are less than eight (8) samples with concentrations equal to or above the limit of measurement, the cabinet may approve alternate means for demonstrating consistent removal. Measurement refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(b) Consistent removal data. Influent and effluent operational data demonstrating consistent removal or other information as provided for in paragraph (a) of this subsection, which demonstrates consistent removal of the pollutants for which discharge limit revisions are proposed shall be considered by the cabinet. These data shall meet the following requirements:

1. Representative data; seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed.
2. Representative data; quality and quantity. The data shall be

representative of the quality and quantity of normal effluent and influent flow if representative data can be obtained. If the data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal as provided in paragraph (a) of this subsection.

3. Sampling procedures: composite.

a. The influent and effluent operational data shall be obtained through twenty-four (24) hour flow proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least twelve (12) aliquots shall be composited. Discrete sampling may be flow proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites shall be flow proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots shall be combined in the laboratory immediately before analysis.

b.(i) Twelve (12) samples shall be taken at approximately equal intervals throughout one (1) full year. Sampling shall be evenly distributed over the days of the week so as to include nonworkdays as well as workdays. If the cabinet determines that this schedule is not the most representative of the actual operation of the POTW treatment plant, an alternative sampling schedule will be approved.

(ii) In addition, upon the cabinet's concurrence, a POTW may utilize an historical data base amassed prior to November 5, 1987 if the data otherwise meet the requirements of this subsection. For the historical data base to be approved, it shall represent a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one (1) year.

c. Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the cabinet requires detention time compensation. The cabinet may require that each effluent sample be taken approximately one (1) detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period shall be based on a twenty-four (24) hour average daily flow value. The average daily flow used shall be based upon the average of the daily flows during the same month of the previous year.

4. Sampling procedures: grab. If composite sampling is not an appropriate sampling technique, grab samples shall be taken to obtain influent and effluent operational data. A grab sample shall be an individual sample collected over a period of time not exceeding fifteen (15) minutes. Collection of influent grab samples shall precede collection of effluent samples by approximately one (1) detention period. The detention period shall be based on a twenty-four (24) hour average daily flow value. The average daily flow used shall be based upon the average of the daily flows during the same month of the previous year. Grab samples shall be taken for example, if the parameters being evaluated are those, such as cyanide and phenol, which may not be held for an extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results.

5. Analytical methods. The sampling referred to in subparagraphs 1 to 4 of this paragraph and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or if the cabinet or EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by EPA.

6. Calculation of removal. All data acquired under the provisions of this section shall be submitted to the cabinet. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percent of the influent concentration, or, if these data cannot be obtained, removal may be demonstrated using other data or procedures subject to concurrence by the cabinet as provided for in paragraph (a) of this subsection.

(3) Provisional credits. For pollutants which are not being dis-

charged currently (i.e., new or modified facilities, or production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities if the quality and quantity of influent are similar. Within eighteen (18) months after the commencement of discharge of pollutants in question, consistent removal shall be demonstrated pursuant to the requirements of subsection (2) of this section. If, within eighteen (18) months after the commencement of the discharge of the pollutant in question, the POTW cannot demonstrate consistent removal pursuant to the requirements of subsection (2) of this section, the authority to grant provisional removal credits shall be terminated by the cabinet and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the cabinet.

(4) Exception to POTW pretreatment program requirement. A POTW required to develop a local pretreatment program by Section 6 of this administrative regulation may conditionally give removal credits pending approval of such a program in accordance with the following terms and conditions:

(a) All industrial users who are currently subject to categorical pretreatment standards and who wish conditionally to receive a removal credit shall submit to the POTW the information required in Section 9(1) of this administrative regulation, except that new or modified industrial users shall submit only the information required by Section 9(1)(a) to (f) of this administrative regulation, pertaining to the categorical pretreatment standard as modified by the removal credit. The industrial users shall indicate what additional technology will be needed to comply with the categorical pretreatment standards as modified by the removal credit;

(b) The POTW shall have submitted to the cabinet an application for pretreatment program approval meeting the requirements of Sections 6 and 7 of this administrative regulation in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's KPDES permit.

(c) The POTW shall:

1. Compile and submit data demonstrating its consistent removal in accordance with subsection (2) of this section;
2. Comply with the conditions specified in subsection (1)(b) of this section; and

3. Submit a complete application for removal credit authority in accordance with subsection (5) of this section;

(d) If a POTW receives authority to grant conditional removal credits and the cabinet subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in paragraphs (b) and (c) of this subsection, the authority to grant conditional removal credits shall be terminated by the cabinet and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time as specified by the cabinet, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the cabinet.

(e) If a POTW grants conditional removal credits and the POTW or the cabinet subsequently makes a final determination, after appropriate notice, that the industrial users failed to comply with the conditions in paragraph (a) of this subsection, the conditional credit shall be terminated by the POTW or the cabinet for the noncomplying industrial users and the industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time as specified by the cabinet, not to exceed the period of time prescribed in the applicable categorical pretreatment standards. The conditional credit shall not be terminated if a violation of the provisions of this subsection results from causes entirely outside of the control of the industrial users or the industrial users had demonstrated substantial compliance.

(f) If the cabinet does not review an application for conditional removal credit authority upon receipt of the application, the conditionally revised discharge limits shall remain in effect until reviewed

by the cabinet. This review shall occur no later than the time of a pretreatment program approval or a related KPDES permit reissuance, according to procedures in Section 8 of this administrative regulation.

(5) POTW application for authorization to give removal credits and cabinet review.

(a) Who shall apply. A POTW that wants to give a removal credit shall apply for authorization from the cabinet.

(b) To whom application shall be made. An application for authorization to give removal credits or modify existing ones shall be submitted by the POTW to the cabinet.

(c) When to apply. A POTW may apply for authorization to give or modify removal credits at any time.

(d) Contents of the application. An application for authorization to give removal credits shall include the following information:

1. List of pollutants. A list of pollutants for which removal credits are proposed.

2. Consistent removal data. The data required pursuant to subsection (2) of this section.

3. Calculation of revised discharge limits. Proposed revised discharge limits for each affected subcategory of industrial users calculated in accordance with subsection (1)(c) of this section.

4. Local pretreatment program certification. A certification that the POTW has an approved local pretreatment program or qualifies for the exception to this requirement found at subsection (4) of this section.

5. Sludge management certification. A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in subsection (1)(b)4 of this section.

6. KPDES permit limit certification. A certification that the granting of removal credits will not cause a violation of the POTW's KPDES permit limits and conditions as required in subsection (1)(b)5 of this section.

(e) Cabinet's review. The cabinet shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of Section 8 of this administrative regulation and shall not have more than 180 days from public notice of an application to complete the review.

(f) Nothing in this administrative regulation precludes an industrial user or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

(6) Continuation and withdrawal of authorization.

(a) Effect of authorization. After a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical pretreatment standard it may automatically extend that removal credit to the same pollutant if it is regulated in other categorical standards, unless granting the removal credit would cause the POTW to violate the sludge requirements identified in subsection (1)(b)4 of this section or its KPDES permit limits and conditions as required by subsection (1)(b)5 of this section. If a POTW elects at a later time to extend removal credits to a certain categorical pretreatment standard, industrial subcategory or one (1) or more industrial users that initially were not granted removal credits, it shall notify the cabinet.

(b) Inclusion in POTW permit. After authority is granted, the removal credits shall be included in the POTW's KPDES permit as soon as possible and shall become an enforceable requirement of the POTW's KPDES permit. The removal credits shall remain in effect for the term of the POTW's KPDES permit, if the POTW maintains compliance with the conditions specified in paragraph (d) of this subsection.

(c) Compliance monitoring. Following authorization to give removal credits, a POTW shall continue to monitor and report on the POTW's removal capabilities at intervals as specified by the cabinet, but no less than once per year. A minimum of one (1) representative sample per month during the reporting period shall be taken, and all sampling data shall be included in the POTW's compliance report.

(d) Modification or withdrawal of removal credits.

1. Notice of POTW. The cabinet shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to paragraph (c) of this subsection or other relevant information avail-

able to it, the cabinet determines:

a. That one (1) or more of the discharge limit revisions made by the POTW, or the POTW itself, no longer meets the requirements of this section; or

b. That the discharge limit revisions are causing a violation of conditions or limits contained in the POTW's KPDES permit.

2. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed sixty (60) days unless the POTW or the affected industrial users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the cabinet shall either withdraw the discharge limits or require modifications in the revised discharge limits.

3. Public notice of withdrawal or modification. The cabinet shall not withdraw or modify revised discharge limits unless it has first notified the POTW and all industrial users to whom revised discharge limits have been applied, and made public, in writing, the reasons for the withdrawal or modification, and an opportunity is provided for a public hearing. Following the notice and withdrawal or modification, all industrial users to whom revised discharge limits had been applied shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with the limits within a reasonable time as may be specified by the cabinet, not to exceed the period of time prescribed in the applicable categorical pretreatment standards.

(7) Compensation for overflow. POTWs which overflow untreated wastewater to receiving waters at least once annually may claim consistent removal of a pollutant only by complying with either paragraph (a) or (b) of this subsection. However, this subsection shall not apply if industrial users can demonstrate that overflow does not occur between the industrial users and the POTW treatment plant.

(a) The industrial user shall provide containment or otherwise shall cease or reduce discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur at the POTW or at a sewer to which the industrial user is connected. Discharges shall cease or be reduced, or pretreatment shall be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision shall be granted only if the POTW submits to the cabinet evidence that:

1. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an overflow event can reasonably be expected to occur, discharges from the regulated processes which contain pollutants for which an allowance is requested;

2. The POTW has identified circumstances in which an overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that industrial users will learn of an impending overflow in sufficient time to contain, cease or reduce discharging to prevent untreated overflows from occurring. The POTW shall also demonstrate that it will monitor and verify the data required in subparagraph 3 of this paragraph, to insure that industrial users are containing, ceasing or reducing operations during POTW system overflow; and

3. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, cabinet or EPA regional administrator, daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an overflow event was reasonably expected to occur; or

(b)1. The consistent removal claimed shall be reduced pursuant to the following equation:

$$r_c = r_m \frac{8760 - Z}{8760}$$

where:

$r_m$  = POTW's consistent removal rate for that pollutant as established under subsection (2)(b) of this section;

$r_c$  = removal corrected by the overflow factor; and

$Z$  = hours per year that overflow occurred between the industrial users and the POTW treatment plant, the hours either to be shown in the POTW's current KPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular industrial user's discharge overflows between the industrial user and the POTW treatment plant.

2. After July 1, 1983, consistent removal may be claimed only if reasonable efforts to correct the conditions resulting in untreated discharges by the POTW are underway in accordance with the policy and procedures set forth in 40 CFR Part 403, Appendix A, adopted without change. Revisions to discharge limits in categorical pretreatment standards may not be made if reasonable efforts have not been committed to by the POTW to minimize pollution from overflows. At a minimum, the POTW shall have completed the analysis required by 40 CFR Part 403, Appendix A and be making a reasonable effort to implement the plan.

3. If, by July 1, 1983, a POTW has begun the 40 CFR Part 403, Appendix A analysis but due to circumstances beyond its control has not completed it, consistent removal, subject to the approval of the cabinet, may continue to be claimed according to the formula in subparagraph 1 of this paragraph if the POTW acts in a timely fashion to complete the analysis and makes an effort to implement the nonstructural cost-effective measures identified by the analysis; and if the POTW has expressed its willingness to apply, after completing the analysis, for a construction grant necessary to implement other cost-effective overflow controls identified in the analysis if federal funds become available, applies for the funds, and proceeds with the required construction in an expeditious manner. In addition, consistent removal may, subject to the approval of the cabinet, continue to be claimed according to the formula in subparagraph 1 of this paragraph if the POTW has completed and the cabinet has accepted the analysis required by 40 CFR Part 403, Appendix A and the POTW has requested inclusion in its KPDES permit of an acceptable compliance schedule providing for timely implementation of cost-effective measures identified in the analysis. In considering what is timely implementation, the cabinet shall consider the availability of funds, cost of control measures, and seriousness of the water quality problem.

Section 6. Pretreatment Program Requirements: Development by POTW. (1) POTWs required to develop a pretreatment program. A POTW, or a combination of POTWs operated by the same authority, with a total design flow greater than five (5) million gallons per day (MGD) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards shall establish a pretreatment program. A POTW with a design flow of five (5) MGD or less shall develop a pretreatment program if the cabinet determines that the nature or volume of the industrial wastewater, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, or other circumstances warrant to prevent interference with the POTW or pass-through.

(2) Deadline for program approval. A POTW which meets the criteria of subsection (1) of this section and is identified through written notification by the cabinet shall develop and submit a pretreatment program for approval as soon as possible, but no later than one (1) year after written notification from the cabinet of the identification. The pretreatment program shall meet the criteria set forth in subsection (4) of this section and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

(3) Incorporation of approved programs in permits. A POTW may develop an appropriate pretreatment program any time before the time limit set forth in subsection (2) of this section. The POTW's KPDES permit shall ~~will~~ be reissued or modified by the cabinet to incorporate the approved program condition ~~conditions~~ as an enforceable condition ~~conditions~~ of the permit. The modification of a POTW's KPDES permit for the purpose ~~purposes~~ of incorporating a POTW pretreatment program approved in accordance with the procedures in Section 8 of this administrative regulation shall be deemed a minor permit modification subject to the procedures in 401 KAR 5:070, Section 6(3).

(4) POTW pretreatment requirements. A POTW pretreatment

program shall be based on the following legal authority and include the following procedures. These authorities and procedures shall be fully and effectively exercised and implemented.

(a) Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal courts or courts of the Commonwealth, which authorizes or enables the POTW to apply and to enforce federal or state statutes and any administrative regulations implementing those statutes. The authority may be contained in statutes, ordinances, or joint powers agreements which the POTW is authorized to enact, enter into or implement, and which are authorized by state law. At a minimum, this legal authority shall enable the POTW to:

1. Deny or condition new or increased contributions of pollutants or flows, or changes in the nature of pollutants, to the POTW by industrial users if the contributions do not meet applicable pretreatment standards and requirements or if the contributions would cause the POTW to violate its KPDES permit;
2. Require compliance with applicable pretreatment standards and requirements by industrial users;
3. Control through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. If industrial users are identified as significant, this control shall be achieved through permits or equivalent individual control mechanisms issued to each identified user. The control mechanisms shall be enforceable and contain, at a minimum, the following conditions:
  - a. A statement of duration of no more than five (5) years;
  - b. A statement of nontransferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
  - c. Effluent limits based on applicable general pretreatment standards in this administrative regulation, categorical pretreatment standards, local limits, and state and local law, whichever is more stringent;
  - d. Self-monitoring, sampling, reporting, notification and record-keeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in this administrative regulation, categorical pretreatment standards, local limits, and state and local law; and
  - e. Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and applicable compliance schedules. The schedules may not extend the compliance date beyond applicable federal deadlines.
4. Require the development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements and the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports required in Section 9 of this administrative regulation;
5. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter a premises of an industrial user in which a discharge source or treatment system is located or in which records are required to be kept to assure compliance with pretreatment standards and requirements. The authority shall be at least as extensive as the authority provided under Section 308 of the Act, 33 USC 1318;
  - 6.a. Obtain remedies for noncompliance by an industrial user with any pretreatment standards or requirements. All POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards or requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties, as authorized by law, in at least the amount of \$1,000 a day for each violation by industrial users of pretreatment standards or requirements. POTWs whose approved pretreatment programs require modification to conform to the requirements of this paragraph shall submit a request for approval of a program modification in accordance with Section 15 of this administrative regulation.
  - b. Pretreatment requirements which will be enforced through the

remedies set forth in clause a of this subparagraph shall include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; rules, local regulations, or orders issued by the POTW; requirements set forth in individual control mechanisms issued by the POTW; and reporting requirements imposed by the POTW or this administrative regulation. The POTW shall have authority and procedures, after informal notice to the discharger, immediately and effectively to halt or prevent a discharge of pollutants to the POTW which reasonably appears to present an imminent danger to the health or welfare of persons. The POTW shall also have authority and procedures, which shall include notice to the affected industrial users and an opportunity to respond, to halt or prevent a discharge to the POTW which presents or may present a danger to the environment or which threatens to interfere with the operation of the POTW. The cabinet shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the cabinet believes to be insufficient.

7. Comply with the confidentiality requirements set forth in Section 11 of this administrative regulation.

(b) Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

1. Identify and locate all possible industrial users which might be subject to the pretreatment program. A compilation, index or inventory of industrial users made under this administrative regulation shall be made available to the cabinet upon request;
2. Identify the character and volume of pollutants contributed to the POTW by the industrial users identified in subparagraph 1 of this paragraph. This information shall be made available to the cabinet upon request;
3. Notify industrial users identified according in subparagraph 1 of this paragraph of applicable pretreatment standards and applicable requirements under Sections 204(b) and 405 of the Act and Subtitles C and D of the Resource Conservation and Recovery Act, 42 USC 6901 et seq. Within thirty (30) days of approval pursuant to paragraph (f) of this subsection of a list of significant industrial users, notify each significant industrial user of its status and of all requirements applicable to it as a result of that status;
4. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in Section 9 of this administrative regulation;
5. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year. Evaluate, at least once every two (2) years, whether each significant industrial user needs a plan to control slug discharges. For purposes of this subsection, a slug discharge shall be a discharge of a non-routine, episodic nature, including but not limited to an accidental spill or noncustomary batch discharge. The results of these activities shall be available to the cabinet upon request. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:
  - a. Description of discharge practices, including nonroutine batch discharges;
  - b. Description of stored chemicals;
  - c. Procedures for immediately notifying the POTW of slug discharges, including a discharge that would violate a prohibition under Section 3 of this administrative regulation, with procedures for follow-up written notification within five (5) calendar days; and
  - d. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, or measures and equipment necessary for emergency response.
6. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required by Section 9 of this administrative regulation, or indicated by analysis, inspection, and surveillance activities described in sub-



paragraph 5 of this paragraph. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions; and

7. Comply with the public participation requirements of 40 CFR Part 25, adopted without change, in the enforcement of national pretreatment standards. These procedures shall include provisions for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user shall be in significant noncompliance if its violation meets one (1) or more of the following criteria:

a. Chronic violations of wastewater discharge limits, which shall be those violations in which sixty-six (66) percent or more of all of the measurements taken during a six (6) month period exceed by any magnitude the daily maximum limit or the average limit for the same pollutant parameter;

b. Technical review criteria (TRC) violations, which shall be those violations in which thirty-three (33) percent or more of all of the measurements for each pollutant parameter taken during a six (6) month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC.  $TRC = 1.4$  for BOD, total suspended solids (TSS), fats, oil, and grease, and  $TRC = 1.2$  for all other pollutants except pH;

c. Other violations of a pretreatment effluent limit (daily maximum or longer term average) that the control authority determines has caused, alone or in combination with other discharges, interference or pass-through, including endangering the health of POTW personnel or the general public;

d. A discharge of a pollutant that has caused imminent danger to human health, to welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (a)6b of this subsection to halt or prevent such a discharge;

e. Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

f. Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance; or

h. Other violations or group of violations which the control authority determines will adversely affect the operation or implementation of the local pretreatment program.

(c) Funding. The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in paragraphs (a) and (b) of this subsection. In some limited circumstances, funding and personnel may be delayed if the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements described in this section; and a limited aspect of the program is not required to be implemented immediately.

(d) Local limits. The POTW shall develop local limits as required in Section 3(3)(a) of this administrative regulation or demonstrate that they are not necessary.

(e) The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

1. Describe how the POTW will investigate instances of noncompliance;

2. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

3. Identify by title the officials responsible for each type of response; and

4. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards as detailed in paragraphs (a) and (b) of this subsection.

(f) The POTW shall prepare and maintain a list of its industrial

users meeting the criteria in 401 KAR 5:002, Section 1, of a significant industrial user.

1. The list shall identify the criteria in 401 KAR 5:002, Section 1, applicable to each industrial user and, for industrial users meeting the criteria of a significant industrial user, shall also indicate if the POTW has made a determination pursuant to 401 KAR 5:002, Section 1, that the industrial user shall not be considered ~~(is not)~~ a significant industrial user.

2. This list, ~~and subsequent modifications thereto,~~ shall be submitted to the cabinet, pursuant to Section 7 of this administrative regulation, as a nonsubstantial program modification pursuant to Section 15(4) ~~[(2)(b)]~~ of this administrative regulation.

3. Modifications to the list shall be submitted to the cabinet pursuant to Section 9(8)(a) of this administrative regulation. ~~[Discretionary designations or de-designations by the control authority shall be deemed to be approved by the cabinet ninety (90) days after submission of the list or modifications thereto, unless the cabinet determines that a modification is in fact a substantial modification.]~~

Section 7. Pretreatment Programs or Authorization to Revise Pretreatment Standards: Submission for Approval. (1) Who approves program. A POTW requesting approval of a pretreatment program shall develop a program description which includes the information set forth in subsection (2)(a) through (d) of this section. This description shall be submitted to the cabinet which shall make a determination on the request for program approval in accordance with the procedures described in Section 8 of this administrative regulation.

(2) Contents of POTW program submission. The program description shall contain the following information:

(a) A statement from the city attorney or legal counsel that the POTW has adequate authority to carry out the programs described in Section 6 of this administrative regulation. This statement shall:

1. Identify the provision of the legal authority which provides the basis for each procedure identified in Section 6(4)(b) of this administrative regulation;

2. Identify the manner in which the POTW will implement the program requirements set forth in Section 6 of this administrative regulation, including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permits, ordinance, etc.); and

3. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them if industrial users do not comply with them;

(b) A copy of statutes, ordinances, local regulations, agreements, or other authorities relied upon by the POTW for its administration of the program. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising or funding the pretreatment program if approved;

(c) A brief description, including organization charts, of the POTW organization which will administer the pretreatment program. If more than one (1) agency is responsible for administration of the program the responsible agencies shall be identified, their respective responsibilities shall be delineated, and their procedures for coordination shall be set forth; and

(d) A description of the funding levels and full-time and part-time personnel available to implement the program.

(3) Conditional program approval. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel for certain elements of the program. The request for conditional approval shall meet the requirements in subsection (2) of this section, but those requirements may be relaxed if the submission demonstrates that:

(a) A limited aspect of the program does not need to be implemented immediately;

(b) The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and

(c) Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW shall describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the cabinet will establish a fixed date for the acquisition of



the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

(4) Content of removal allowance submission. The request for authority to revise categorical pretreatment standards shall contain the information required in Section 5(4) of this administrative regulation.

(5) Cabinet action. A POTW requesting pretreatment program approval shall submit to the cabinet two (2) copies of the submission described in subsection (2) of this section, and if appropriate, subsection (4) of this section. Within sixty (60) days after receiving the submission, the cabinet shall make a preliminary determination of whether the submission meets the requirements of subsection (2) of this section, and if appropriate, subsection (4) of this section. If the cabinet makes the preliminary determination that the submission meets these requirements, the cabinet shall:

(a) Notify the POTW that the submission has been received and is under review; and

(b) Commence the public notice and evaluation activities set forth in Section 8 of this administrative regulation.

(6) Notification if submission is defective. If, after review of the submission as provided for in subsection (5) of this section, the cabinet determines that the submission does not comply with the requirements of subsection (2) or (3) of this section and subsection (4) of this section, if appropriate, the cabinet shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of subsections (2) and (3) of this section and subsection (4) of this section, if appropriate.

(7) Consistency with water quality management plans.

(a) The pretreatment program shall be consistent with approved water quality management plans developed in accordance with Section 208 Regional Facility Plan of the Clean Water Act, 33 USC 1288 and 40 CFR Parts 130, 131, as revised, if the Section 208 Regional Facility Plan includes management agency designations and addresses pretreatment in a manner consistent with this administrative regulation. To assure this consistency the cabinet shall solicit the review and comment of the appropriate Section 208 regional planning agency during the public comment period provided for in Section 8 of this administrative regulation prior to approval or disapproval of the program.

(b) If no Section 208 Regional Facility Plan has been approved or if a plan has been approved but lacks management agency designations or does not address pretreatment in a manner consistent with this administrative regulation, the cabinet shall nevertheless solicit the review and comment of the appropriate Section 208 regional planning agency.

Section 8. Approval Procedures for POTW Pretreatment Programs and POTW Granting of Removal Credits. The following procedures shall apply in approving or denying requests for approval of POTW pretreatment programs and applications for removal credit authorization:

(1) Deadline for review of submission. The cabinet shall have ninety (90) days from the date of public notice of a submission complying with the requirements of Section 7 of this administrative regulation and, if removal credit authorization is sought, with Sections 5(5) and 7(4) of this administrative regulation, to review the submission. The cabinet shall review the submission to determine compliance with the requirements of Section 6(2) and (4) of this administrative regulation and if removal credit authorization is sought, with Section 5 of this administrative regulation. The cabinet may have up to an additional ninety (90) days to complete the evaluation of the submission if the public comment period provided for in subsection (2)(a) of this section is extended beyond thirty (30) days or if a public hearing is held as provided for in subsection (2)(b) of this section. The time for evaluation of the submission shall not exceed a total of 180 days from the date of public notice of a submission meeting the requirements of Section 7(2) of this administrative regulation and, if the application is a removal credit application, Sections 5(5) and 7(2) of this administrative regulation.

(2) Public notice and opportunity for hearing. Upon receipt of a submission the cabinet shall commence its review. Within twenty (20) work days after making a determination that a submission meets the requirements of Section 7(2) of this administrative regulation and if removal allowance approval is requested, Sections 5(5) and 7(4) of this administrative regulation, the cabinet shall:

(a) Issue a public notice of request for approval of the submission.

1. This public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the submission. Procedures for the circulation of public notice shall include:

a. Mailing notices of the request for approval of the submission to designated Section 208 regional planning agencies, federal fish, shellfish, and wildlife resource agencies unless these agencies have asked not to be sent the notices; Kentucky Department of Fish and Wildlife; and to other persons or groups who have requested individual notice, including those on appropriate mailing lists; and

b. Publication of a notice of request for approval of the submission in a newspaper of general circulation [the largest daily newspaper] within the jurisdictions served by the POTW. The cost of the advertisement shall be borne by the applicant.

2. The public notice shall provide a period of not less than thirty (30) days following the date of the public notice during which time interested persons may submit their written views on the submission.

3. All written comments submitted during the thirty (30) day comment period shall be retained by the cabinet and considered in the decision on whether or not to approve the submission. The period for comment may be extended by the cabinet.

(b) Provide an opportunity for the applicant, an affected state, interested state or federal agencies, person, or group of persons to request a public hearing with respect to the submission.

1. This request for public hearing shall be filed within the thirty (30) day, or extended, comment period described in paragraph (a)2 of this subsection and shall indicate the interest of the person filing the request and the reasons why a hearing is warranted.

2. The cabinet shall hold a hearing if the POTW so requests. In addition, a hearing will be held if there is a significant public interest in issues relating to whether or not the submission should be approved. Instances of doubt should be resolved in favor of holding the hearing.

3. Public notice of a hearing to consider a submission and sufficient to inform interested parties of the nature of the hearing and the right to participate shall be published in the same newspaper as the notice of the original request for approval of the submission under paragraph (a)1 of this subsection. The cost of the advertisement shall be borne by the applicant. In addition, notice of the hearing shall be sent to those persons requesting individual notice.

(3) Cabinet decision. At the end of the thirty (30) day, or extended, comment period and within the ninety (90) day, or extended, period provided for in subsection (1) of this section, the cabinet shall approve or deny the submission based upon the evaluation described in subsection (1) of this section and taking into consideration comments submitted during the comment period and the record of the public hearing, if held. If the cabinet makes a determination to deny the request, the cabinet shall so notify the POTW and each person who has requested individual notice. This notification shall include suggested modifications and the cabinet may allow the requestor additional time to bring the submission into compliance with applicable requirements.

(4) EPA objection to cabinet's decision. No pretreatment program or authorization to grant removal allowances shall be approved by the cabinet if following the thirty (30) day, or extended, evaluation period provided for in subsection (2)(a)2 of this section and a hearing held pursuant to subsection (2)(b) of this section the regional administrator sets forth in writing objections to the approval of the submission and the reasons for the objections. A copy of the regional administrator's objections shall be provided to the applicant and each person who has requested individual notice. The regional administrator shall provide an opportunity for written comments and may convene a public hearing on its objections. Unless retracted, the regional administrator's objections shall constitute a final ruling to deny approval of a pretreatment program or authorization to grant removal allowances ninety (90) days after the date the objections

are issued.

(5) Notice of decision. The cabinet shall notify those persons who submitted comments and participated in the public hearing, if held, of the approval or disapproval of the submission. In addition, the cabinet shall cause to be published a notice of approval or disapproval in the same newspapers as the original notice of request for approval of the submission was published. The cabinet shall identify in the notice of pretreatment program approval any authorization to modify categorical pretreatment standards which the POTW may make, in accordance with Section 5 of this administrative regulation, for removal of pollutants subject to pretreatment standards.

(6) Public access to submission. The cabinet shall ensure that the submission and comments upon the submission are available to the public for inspection and copying.

Section 9. Reporting Requirements for POTWs and Industrial Users. (1) Reporting requirements for industrial users upon effective date of categorical pretreatment standard baseline report. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under Section 4 of this administrative regulation, whichever is later, existing industrial users subject to the categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall submit to the control authority a report which contains the information listed in this subsection, ~~unless reports containing this information already have been submitted to the cabinet or regional administrator in compliance with 40 CFR 128.140(b) (1977)~~. At least ninety (90) days prior to commencement of discharge, new sources, and sources that become industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the control authority a report which contains the information listed in paragraphs (a) to (e) of this subsection. New sources shall also include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in paragraphs (d) and (e) of this subsection.

(a) Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners.

(b) Permits. The user shall submit a list of environmental control permits held by or for the facility.

(c) Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operations carried out by the industrial user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

(d) Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

1. Regulated process streams; and

2. Other streams as necessary to allow use of the combined waste stream formula of Section 4(5) of this administrative regulation, as referenced in paragraph (e)5 of this subsection. The control authority may allow for verifiable estimates of these flows if justified by cost or feasibility considerations.

(e) Measurement of pollutants.

1. The user shall identify the pretreatment standards applicable to each regulated process;

2. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration, or mass, if mass is required by the standard or control authority, of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration, or mass, if required, shall be reported. The sample shall be representative of daily operations; and

3. A minimum of four (4) grab samples shall be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, twenty-four (24) hour composite samples shall be obtained through flow proportional composite sampling techniques if feasible. The control authority may waive flow proportional composite sampling for an industrial user that demonstrates that flow proportional sampling is not feasible. If flow sampling is not

feasible, samples may be obtained through time proportional composite sampling techniques or through a minimum of four (4) grab samples if the user demonstrates that this will provide a representative sample of the effluent being discharged.

4. The user shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this subsection.

5. Samples shall be taken immediately downstream from pretreatment facilities if they exist or immediately downstream from the regulated process if no pretreatment facility exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined waste stream formula of Section 4 of this administrative regulation to evaluate compliance with the pretreatment standards. If an alternate concentration or mass limit has been calculated in accordance with Section 4 of this administrative regulation, this adjusted limit and the supporting data shall be submitted to the control authority.

6. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or if the regional administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the regional administrator;

7. The control authority may allow the submission of a baseline report which utilizes only historical data as long as the data provide information sufficient to determine the need for industrial pretreatment measures;

8. The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that the sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW;

(f) Certification. The user shall submit a statement, reviewed by an authorized representative of the industrial user and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

(g) Compliance schedule. If additional pretreatment or O&M will be required to meet the pretreatment standards, the user shall submit the shortest schedule by which the industrial user will provide the additional pretreatment or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

1. If the industrial user's categorical pretreatment standard has been modified by a removal allowance pursuant to Section 4 of this administrative regulation, the combined waste stream formula pursuant to Section 4(5) of this administrative regulation, or a fundamentally different factor ~~[factors]~~ variance pursuant to Section 10 of this administrative regulation when the user submits the report required by this section, the information required by paragraph (f) of this subsection and this paragraph shall pertain to the modified limits.

2. If the categorical pretreatment standard is modified by a removal allowance pursuant to Section 5 of this administrative regulation, the combined waste stream formula pursuant to Section 4(5) of this administrative regulation, or a fundamentally different factor ~~[factors]~~ variance pursuant to Section 10 of this administrative regulation after the user submits the report required by this section, necessary amendments to the information requested by paragraph (f) of this subsection and this paragraph shall be submitted by the user to the control authority within sixty (60) days after the modified limit is approved.

(2) Compliance schedule for meeting categorical pretreatment standards. The following conditions shall apply to the schedule required by subsection (1)(g) of this section:

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pre-

treatment required for the industrial user to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

(b) No increment referred to in paragraph (a) of this subsection shall exceed nine (9) months.

(c) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on the date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. No more than nine (9) months shall elapse between the progress reports to the control authority.

(3) Report on compliance with categorical pretreatment standard deadline. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or if a new source, following commencement of the introduction of wastewater into the POTW, an industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subsection (1)(d) to (f) of this section. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with Section 4(3) of this administrative regulation, this report shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production or other measure of operation, this report shall include the user's actual production during the appropriate sampling period.

(4) Periodic reports on continued compliance.

(a) An industrial user subject to a categorical pretreatment standard, after the compliance date of the pretreatment standard, or, if a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard, by the control authority, or by the cabinet, a report indicating the nature and concentration of pollutants in the effluent which are limited by the categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subsection (1)(d) of this section except that the control authority may require more detailed reporting of flows. In consideration of factors such as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports shall be submitted.

(b) If the control authority has imposed mass limitations on industrial users as provided for by Section 4(4) of this administrative regulation, the report required by paragraph (a) of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(c) For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with Section 4(3) of this administrative regulation, the report required by paragraph (a) of this subsection shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production or other measure of operation, the report required by paragraph (a) of this subsection shall include the user's actual average production rate for the reporting period.

(5) Notice of potential problems, including slug loading. All categorical and noncategorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including slug loadings, by the industrial user.

(6) Monitoring and analysis to demonstrate continued compliance.

(a) The reports required in subsections (1), (3), and (4) of this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass if requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by

the control authority in lieu of the industrial user. If the POTW performs the required sampling and analysis in lieu of the industrial user, the user is not required to submit the compliance certification required under subsections (1) and (3) of this section. In addition, if the POTW itself collects all the information required for the report, including flow data, the industrial user is not required to submit the report.

(b) If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within thirty (30) days after becoming aware of the violation, except the industrial user is not required to resample if:

1. The control authority performs sampling at the industrial user at a frequency of at least once per month; or

2. The control authority performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(c) The reports required in subsection (4) of this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

(d) All analyses shall be performed in accordance with procedures established by the administrator pursuant to Section 304(h) of the Act, 33 USC 1314(h) and contained in 40 CFR Part 136 and amendments thereto or with other test procedures approved by the administrator. Sampling shall be performed in accordance with the techniques approved by the administrator. If 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or if the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator.

(e) If an industrial user subject to the reporting requirement in subsection (4) of this section monitors pollutants more frequently than required by the control authority, using the procedures prescribed in paragraph (d) of this subsection, the results of this monitoring shall be included in the report.

(7) Reporting requirements for industrial users not subject to categorical pretreatment standards. The control authority shall require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant noncategorical industrial users shall submit to the control authority at least once every six (6) months, on dates specified by the control authority, a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. These reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 CFR Part 136 and amendments thereto. If 40 CFR Part 136 does not contain sampling and analytical techniques for the pollutant in question, or if the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the administrator. This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user. If the POTW itself collects all the information required for the report, the noncategorical significant industrial user is not required to submit the report.

(8) Semiannual POTW reports. POTWs with approved pretreatment programs shall provide the cabinet with a report that briefly describes the POTW's program activities, including activities of all participating agencies, if more than one (1) jurisdiction is involved in the local program. The report required by this subsection shall be submitted no later than one (1) year after approval of the POTW's pretreatment program, and at least semiannually thereafter, and

shall include, at a minimum, the following:

(a) An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements;

(b) A summary of the status of industrial user compliance over the reporting period;

(c) A summary of compliance and enforcement activities including inspections, conducted by the POTW during the reporting period; ~~and~~

(d) A summary of changes to the POTW's pretreatment program that have not been previously reported to the cabinet; and

(e) Other relevant information requested by the cabinet.

(9) Notification of changed discharge. All industrial users shall promptly notify the POTW in advance of a substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under subsection (15) of this section.

(10) Compliance schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program required by Section 6 of this administrative regulation.

(a) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);

(b) No increment referred to in paragraph (a) of this subsection shall exceed nine (9) months;

(c) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the cabinet including, as a minimum, whether or not it complied with the increment of progress to be met on the date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. No more than nine (9) months shall elapse between the progress reports to the cabinet.

(11) Signatory requirements for industrial user reports. The reports required by subsections (1), (3) and (4) of this section shall include the certification statement as set forth in Section 4(1)(b)2 of this administrative regulation and shall be signed as follows:

(a) By a responsible corporate officer, if the industrial user submitting the reports required by subsection (1) of this section is a corporation. For the purpose of this paragraph, a responsible corporate officer shall be:

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision making functions for the corporation; or

2. The manager of one (1) or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 in second quarter 1980 dollars, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) By a general partner or proprietor if the industrial user submitting the reports required by subsection (1), (3), or (4) of this section is a partnership or sole proprietorship respectively.

(c) By a duly authorized representative of the individual designated in paragraph (a) or (b) of this subsection if:

1. The authorization is made in writing by the individual described in paragraph (a) or (b) of this subsection;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility

for environmental matters for the company; and

3. The written authorization is submitted to the control authority.

(d) If an authorization in paragraph (c) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (c) of this subsection shall be submitted to the control authority prior to or together with reports to be signed by an authorized representative.

(12) Signatory requirements for POTW reports. Reports submitted to the cabinet by the POTW in accordance with subsection (7) of this section shall be signed by a principal executive officer, ranking elected official or other duly authorized employee if the employee is responsible for overall operation of the POTW.

(13) Provisions governing fraud and false statements. The reports and other documents required to be submitted or maintained under this section shall be subject to:

(a) The provisions of 18 USC Section 1001 relating to fraud and false statements;

(b) The provisions of Section 309(c)(4) of the Act, 33 USC 1319(c)(4), as amended, governing false statements, representation or certification; and

(c) The provisions of Section 309(c)(6) of the Act, 33 USC 1319(c)(6) regarding responsible corporate officers.

(14) Recordkeeping requirements.

(a) Industrial users and POTWs subject to the reporting requirement established in this section shall maintain records of all information resulting from monitoring activities required by this section. These records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the persons taking the samples;
2. The date analyses were performed;
3. Who performed the analyses;
4. The analytical techniques or methods used; and
5. The results of the analyses.

(b) Industrial users or POTWs subject to the reporting requirements established in this section shall retain for a minimum of three (3) years records of monitoring activities and results, whether or not the monitoring activities are required by this section, and shall make the records available for inspection and copying by the cabinet and the regional administrator and POTW, if an industrial user. This period of retention shall be extended during the course of unresolved litigation regarding the industrial user or POTW or if requested by the cabinet or the regional administrator.

(c) A POTW to which reports are submitted by an industrial user pursuant to subsections (1), (3), (4), and (7) of this section shall retain the reports for a minimum of three (3) years and shall make the reports available for inspection and copying by the cabinet and the regional administrator. This period of retention shall be extended during the course of unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or if requested by the cabinet or the regional administrator.

(15)(a) The industrial user shall notify the POTW, the EPA regional waste management division director, and Kentucky Division of Waste Management in writing of a discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. The notification shall include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of this waste per calendar month to the POTW, the notification shall also contain the information in subparagraphs 1 to 3 of this paragraph to the extent the information is known and readily available to the industrial user. All notifications shall have occurred within 180 days of July 24, 1990. Industrial users who commence discharging after July 24, 1990 shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. A notification under this subsection shall be submitted only once for each hazardous waste discharged. However, notifications of changed discharges shall be submitted according to subsection (9) of this section. The notification requirement in this section shall not apply to pollutants already reported under self-monitoring requirements of subsections (1), (3), and (4) of this section.

1. An identification of the hazardous constituents contained in the wastes;
2. An estimation of the mass and concentration of the constituents in the waste stream discharged during that calendar month;
3. And an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months.

(b) Dischargers shall be exempt from the requirements of paragraph (a) of this subsection during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one (1) time notification. Subsequent months during which the industrial user discharges more than these quantities of hazardous waste do not require additional notification.

(c) If new federal regulations are promulgated under Section 3001 of RCRA, 42 USC 6921, identifying additional characteristics of hazardous waste or listing an additional substance as a hazardous waste, the industrial user shall notify the POTW, the EPA regional waste management division director, and Kentucky Division of Waste Management of the discharge of the substance within ninety (90) days of the effective date of the federal regulations.

(d) If a notification is made under this subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

Section 10. Variances from Categorical Pretreatment Standards and Fundamentally Different Factors. (1) Purpose and scope. The U.S. EPA may, on a case-by-case basis, adjust the limits in categorical pretreatment standards, making them either more or less stringent, as they apply to a certain industrial user within an industrial category or subcategory. This adjustment will be done only if factors fundamentally different from those considered by EPA in developing the limit at issue are indicated by data specific to that industrial user. Interested persons believing that factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that user and further, that the existence of those factors justifies a different discharge limit than specified in the applicable categorical pretreatment standard, may request a fundamentally different factors variance under this section or such a variance request may be initiated by the U.S. EPA.

(2) Criteria.

(a) General criteria. A request for a variance based upon fundamentally different factors shall be approved by EPA only if:

1. There is an applicable categorical pretreatment standard which specifically controls the pollutant for which alternative limits have been requested;
2. Factors relating to the discharge controlled by the categorical pretreatment standard are fundamentally different from the factors considered by EPA in establishing the standards; and
3. The request for a variance is made in accordance with the procedural requirements in subsections (6) and (7) of this section.

(b) Criteria applicable to less stringent limits. A variance request for the establishment of limits less stringent than required by the standard shall be approved by EPA only if:

1. The alternative limit requested is no less stringent than justified by the fundamental difference;
2. The alternative limit will not result in a violation of prohibitive discharge standards prescribed by or established under Section 3 of this administrative regulation;
3. The alternative limit will not result in a nonwater quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the pretreatment standards; and
4. Compliance with the standards, either by using the technologies upon which the standards are based or by using other control alternatives, would result in either:
  - a. A removal cost, adjusted for inflation wholly out of proportion to the removal cost considered during development of the stan-

dards; or

b. A nonwater quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the standards.

(c) Criteria applicable to more stringent limits. A variance request for the establishment of limits more stringent than required by the standards shall be approved by EPA only if:

1. The alternative limit request is no more stringent than justified by the fundamental difference; and

2. Compliance with the alternative limit would not result in either:

a. A removal cost, adjusted for inflation wholly out of proportion to the removal cost considered during development of the standards; or

b. A nonwater quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the standards.

(3) Factors considered fundamentally different. Factors which may be considered fundamentally different are:

(a) The nature or quality of pollutant contained in the raw waste load of the user's process wastewater;

(b) The volume of the user's process wastewater and effluent discharged;

(c) Nonwater quality environmental impact of control and treatment of the user's raw waste load;

(d) Energy requirements of the application of control and treatment technology;

(e) Age, size, land availability, and configuration as they relate to the user's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology; and

(f) Cost of compliance with required control technology.

(4) Factors which shall not be considered fundamentally different. A variance request or portion of such a request under this section shall not be granted on the following grounds:

(a) The feasibility of installing the required waste treatment equipment within the time the Act allows;

(b) The assertion that the standards cannot be achieved with the appropriate waste treatment facilities installed, if the assertion is not based on factors listed in subsection (3) of this section;

(c) The user's ability to pay for the required waste treatment; or

(d) The impact of a discharge on the quality of the POTW's receiving waters.

(5) Local law. Nothing in this section shall be construed to impair the right of a locality under Section 510 of the Act, 33 USC 1370 to impose more stringent limitations than required by federal law or this administrative regulation.

(6) Application deadline.

(a) Requests for a variance and supporting information shall be submitted in writing to the cabinet.

(b) To be considered, a request for a variance shall be submitted no later than 180 days after the date on which a categorical pretreatment standard is published in the Federal Register.

(c) If the user has requested a categorical determination pursuant to Section 4(1) of this administrative regulation, the user may await the results of the category determination before submitting a variance request under this section. If the user so elects, the user shall submit the variance request within thirty (30) days after a final decision has been made on the categorical determination pursuant to Section 4(1)(d) of this administrative regulation.

(7) Contents submission. Written submissions for variance request made to the cabinet shall include:

(a) The name and address of the person making the request;

(b) Identification of the interest of the requester which is affected by the categorical pretreatment standard for which the variance is requested;

(c) Identification of the POTW currently receiving the waste from the industrial user for which alternative discharge limits are requested;

(d) Identification of the categorical pretreatment standards which are applicable to the industrial user;

(e) A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;

(f) The alternative discharge limits proposed by the requester for each pollutant or pollutant parameter identified in paragraph (e) of



this subsection;

(g) A description of the industrial user's existing water pollution control facilities;

(h) A schematic flow representation of the industrial user's water system including water supply, process wastewater systems, and points of discharge; and

(i) A statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the EPA and used in developing each pollutant discharge limit in the pretreatment standard.

(8) Deficient requests. The cabinet will act only on written requests for variances that contain all of the information required. Persons who have made incomplete submissions will be notified by the cabinet that their requests are deficient and unless the time period is extended, will be given up to thirty (30) days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the cabinet, the request for a variance shall be denied.

(9) Public notice. Upon receipt of a complete request, the cabinet shall provide notice of receipt, opportunity to review the submission, and opportunity to comment.

(a) The public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the request. Procedures for the circulation of public notice shall include mailing notices to:

1. The POTW into which the industrial user requesting the variance discharges;

2. Adjoining states whose waters may be affected; and

3. Designated Section 208 regional planning agencies, federal fish, shellfish and wildlife resource agencies; the Kentucky Department of Fish and Wildlife; and to other persons or groups who have requested individual notice, including those on appropriate mailing lists.

(b) The public notice shall provide for a period not less than thirty (30) days following the date of the public notice during which time interested persons may review the request and submit their written views on the request.

(c) Following the comment period, the cabinet will make a determination on the request taking into consideration comments received. Notice of this final decision shall be provided to the requester, the industrial user for which the variance is requested if different than the requester, the POTW into which the industrial user discharges, and all persons who submitted comments on the request.

(10) Review of requests by state.

(a) If the cabinet finds that fundamentally different factors do not exist, it may deny the request and notify the requester, the industrial user if they are not the same, and the POTW of the denial.

(b) If the cabinet finds that fundamentally different factors do exist, it shall forward the request, with a recommendation that the request be approved, to the regional administrator or the regional administrator's delegate.

(11) Review of requests by EPA.

(a) If the regional administrator or the regional administrator's delegate finds that fundamentally different factors do not exist, the regional administrator or delegate shall deny the request for a variance and send a copy of that determination to the cabinet, to the POTW, and to the requester and the industrial user, if they are not the same.

(b) If the regional administrator or the regional administrator's delegate finds that fundamentally different factors do exist, and that a partial or full variance is justified, the regional administrator or delegate will approve the variance. In approving the variance, the administrator or the delegate will:

1. Prepare recommended alternative discharge limits for the industrial user either more or less stringent than those prescribed by the applicable categorical pretreatment standard to the extent warranted by the demonstrated fundamentally different factors;

2. Provide the following information in the regional administrator's written determination:

a. The recommended alternative discharge limits for the industrial user concerned;

b. The rationale for the adjustment of the pretreatment standard,

including the reasons for recommending that the variance be granted, and an explanation of how the recommended alternative discharge limits were derived;

c. The supporting evidence submitted to the regional administrator or the regional administrator's delegate; and

d. Other information considered by the regional administrator or the regional administrator's delegate in developing the recommended alternative discharge limits;

3. Notify the cabinet and the POTW of the regional administrator's determination; and

4. Send the information described in subparagraphs 1 and 2 of this paragraph to the requester and to the industrial user if they are not the same.

(12) Request for hearing.

(a) Within thirty (30) days following the date of receipt of the notice of the decision of the administrator's delegate on a variance request, the requester or other interested persons may submit a petition to the regional administrator for a hearing to reconsider or contest the decision. If such a request is submitted by a person other than the industrial user the person shall simultaneously serve a copy of the request on the industrial user.

(b) If the regional administrator declines to hold a hearing and the regional administrator affirms the findings of the regional administrator's delegate, the requester may submit a petition for a hearing to the Environmental Appeals Board, described in 40 CFR 1.25(e), within thirty (30) days of the regional administrator's decision.

Section 11. Confidentiality. (1) Authorities. In accordance with KRS 224.10-210 and administrative regulations promulgated pursuant thereto, information submitted to the cabinet pursuant to this administrative regulation may be claimed as confidential by the submitter.

(2) POTW. All other information submitted to the POTW shall be available to the public at least to the extent provided by KRS 61.870 to 61.882 and 61.960 to 61.975.

Section 12. Net-gross Calculation. Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with this section.

(1) Application. Industrial users wishing to obtain credit for intake pollutants shall apply to the control authority. Upon request of the industrial user, the applicable standard will be calculated on a net basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of subsections (2) and (3) of this section are met.

(2) Criteria.

(a) The industrial user shall demonstrate that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as BOD, TSS, and oil and grease shall not be granted unless the industrial user demonstrates that the constituents of the generic measure in the user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standards, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with standards adjusted under this section.

(d) Credit shall be granted only if the user demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The control authority may waive this requirement if it finds that no environmental degradation will result.

(3) The applicable categorical pretreatment standards contained in 40 CFR Chapter I, Subchapter N specifically provide that they shall be applied on a net basis.

Section 13. Upset Provision. (1) Effect of an upset. An upset shall constitute an affirmative defense to an action brought for non-compliance with categorical pretreatment standards if the requirements of subsection (2) of this section are met.

(2) Conditions necessary for a demonstration of upset. An industrial user who wishes to establish the affirmative defense of up-



set shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the industrial user can identify the causes of the upset;

(b) The facility was being operated in a prudent and workman-like manner and was in compliance with applicable operation and maintenance procedures when the upset occurred;

(c) The industrial user has submitted the following information to the control authority within twenty-four (24) hours of becoming aware of the upset; if this information is provided orally, a written submission shall be provided within five (5) days:

1. A description of the indirect discharge and cause of noncompliance;

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

3. Steps being taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(3) Burden of proof. In enforcement proceedings the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(4) Reviewability of the cabinet's consideration of claims of upset. The cabinet shall review claims that noncompliance was caused by an upset. No determinations made in the course of the review shall constitute a final agency action subject to KRS 224.10-420. Industrial users shall have an opportunity for a hearing on claims of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(5) User responsibility if an upset occurs. The industrial user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation if, among other things, the primary source of power of the treatment facility fails or is reduced or lost.

Section 14. Bypass. An industrial user shall comply with this section in addressing bypasses.

(1) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow a bypass to occur if it will not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to subsections (2) and (3) of this section.

(2) Notice.

(a) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the control authority, if possible at least ten (10) days before the date of the bypass.

(b) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the control authority within twenty-four (24) hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The control authority may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(3) Prohibition of bypass.

(a) Bypass is prohibited, and the control authority may take enforcement action against an industrial user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

3. The industrial user submitted notices as required under subsection (2) of this section.

(b) The control authority may approve an anticipated bypass, after considering its adverse effects, if the control authority determines that it will meet the three (3) conditions listed in paragraph (a) of this subsection.

Section 15. Modification of POTW Pretreatment Programs. (1) General. Either the cabinet or a POTW with an approved POTW pretreatment program may initiate program modifications at any time to reflect changing conditions at the POTW. Program modification is necessary if there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under Section 8 of this administrative regulation.

(2) Substantial modifications. Substantial modifications include:

(a) Modifications that relax POTW legal authorities as described in Section 6(4)(a) of this administrative regulation, except for modifications that directly reflect a revision to this administrative regulation or to 40 CFR Chapter I, Subchapter N, and are reported pursuant to subsection (4) of this section;

(b) Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the maximum allowable industrial loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to subsection (4) of this section. Maximum allowable industrial loading means the total mass of a pollutant that all industrial users of a POTW or a subgroup of industrial users identified by the POTW may discharge pursuant to limits developed under Section 3(3) of this administrative regulation;

(c) Changes to the POTW's control mechanism, as described in Section 6(4)(a)3 of this administrative regulation;

(d) A decrease in the frequency of self-monitoring or reporting required of industrial users;

(e) A decrease in the frequency of industrial user inspections or sampling by the POTW;

(f) Changes to the POTW's confidentiality procedures; or

(g) Other modifications designated as substantial modifications by the cabinet on the basis that the modification could have a significant impact on the operation of the POTW's pretreatment program; shall result in an increase in pollutant loadings at the POTW; or shall result in less stringent requirements being imposed on industrial users of the POTW.

(3) Approval procedures for substantial modifications. ~~Procedures. POTW pretreatment program modifications shall be accomplished as follows:~~

~~(a) For substantial modifications as described in subsection (3) of this section;~~

(a) [4.] The POTW shall submit to the cabinet a statement of the basis for the desired program modification, a modified program description pursuant to Section 7(2) of this administrative regulation, or other documents the cabinet determines to be necessary under the circumstances.

(b) [2.] The cabinet shall approve or disapprove the modification based on the requirements of Section 6(4) of this administrative regulation and using ~~following~~ the procedures in Section 8(2) through (6) of this administrative regulation, except as provided in paragraphs (c) and (d) of this subsection of this section. The modification shall become effective upon approval by the cabinet.

(c) The cabinet need not publish a notice of decision under Section 8(5) of this administrative regulation provided:

1. The notice of request for approval under Section 8(2)(a) of this administrative regulation states that the request shall be approved if no comments are received by a date specified in the notice;

2. No substantive comments are received; and

3. The request is approved without change.

(d) Notices required by Section 8(2) of this administrative regulation may be performed by the POTW if the cabinet finds that the notice otherwise satisfies the requirements of Section 8 of this administrative regulation.

(4) Approval procedures for nonsubstantial modifications.

(a) The POTW shall notify the cabinet of nonsubstantial modifications at least forty-five (45) days prior to implementation, in a

statement similar to that provided for in subsection (3)(a) of this section.

(b) Within forty-five (45) days after the submission of the POTW's statement, the cabinet shall notify the POTW of its decision to approve or deny the nonsubstantial modification.

(c) If the cabinet does not notify the POTW within forty-five (45) days of its decision to approve or deny the modification, or to treat the modification as substantial under subsection (2)(g) of this section, the POTW may implement the modification.

(5) Incorporation into the permit. All modifications ~~to~~ <sup>3. The modification</sup> shall be incorporated into the POTW's KPDES permit ~~upon~~ <sup>after</sup> approval. The permit shall be modified to incorporate the approved modification in accordance with 401 KAR 5:070, Section 6(3)(g).

~~4. The modification shall become effective upon approval by the cabinet. Notice of approval shall be published in the same newspaper as the notice of the original request for approval of the modification under Section 8 of this administrative regulation.~~

~~(b) The POTW shall notify the cabinet of nonsubstantial modifications to its pretreatment program at least thirty (30) days prior to when they are to be implemented by the POTW in a statement similar to that provided for in paragraph (a) of this subsection. These nonsubstantial program modifications shall be deemed to be approved by the cabinet, unless the cabinet determines that a modification submitted is in fact a substantial modification, within ninety (90) days after the submission of the POTW's statement. Following approval by the cabinet, the modifications shall be incorporated into the POTW's permit in accordance with 401 KAR 5:070. If the cabinet determines that a modification reported by a POTW in its statement is in fact a substantial modification, the cabinet shall notify the POTW and initiate the procedures in paragraph (a) of this subsection.~~

~~(3) Substantial modifications.~~

~~(a) The following shall be substantial modifications for purposes of this section:~~

- ~~1. Changes to the POTW's legal authorities;~~
- ~~2. Changes to local limits, which result in less stringent local limits;~~
- ~~3. Change to the POTW's control mechanism, as described in Section 6 of this administrative regulation;~~
- ~~4. Changes to the POTW's method for implementing categorical pretreatment standards (e.g., incorporation by reference, separate promulgation, etc.);~~
- ~~5. A decrease in the frequency of self-monitoring or reporting required of industrial users;~~
- ~~6. A decrease in the frequency of industrial user inspections or sampling by the POTW;~~
- ~~7. Changes to the POTW's confidentiality procedures;~~
- ~~8. Significant reductions in the POTW's pretreatment program resources including personnel commitments, equipment, and funding levels; and~~
- ~~9. Changes in the POTW's sludge disposal and management practices.~~

~~(b) The cabinet may designate other specific modifications, in addition to those listed in paragraph (a) of this subsection, as substantial modifications.~~

~~(c) A modification that is not included in paragraph (a) of this subsection is nonetheless a substantial modification for purposes of this subsection if the modification:~~

- ~~1. Would have a significant impact on the operation of the POTW's pretreatment program;~~
- ~~2. Would result in an increase in pollutant loadings at the POTW; or~~
- ~~3. Would result in less stringent requirements being imposed on industrial users of the POTW.]~~

Section 16. Pretreatment Program Reinvention Pilot Projects Under Project XL. The cabinet may allow any POTW that has a final "Project XL" agreement to implement a pretreatment program that includes legal authorities and requirements that are different than the administrative requirements otherwise applicable under this administrative regulation. The POTW shall submit the alternative requirements as a substantial program modification in accordance with the procedures outlined in Section 15 of this administrative

regulation. The approved modified program shall be incorporated as an enforceable part of the POTW's KPDES permit. The cabinet shall include a reopener clause in the POTW's KPDES permit that directs the POTW to discontinue implementing the approved alternative requirements and resume implementation of its previously approved pretreatment program if the cabinet determines that the primary objectives of the local pilot pretreatment program are not being met or the "Project XL" agreement expires or is otherwise terminated.

Section 17. Federal Regulations Adopted Without Change. The cabinet shall be governed by the following federal regulations for the indicated subject matter; the federal regulations are hereby adopted without change. The federal regulations are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C., except as noted:

(1) 40 CFR 1.25(e), "Environmental Appeals Review Board", as in effect on July 1, 2001 [February 13, 1992], for the appeals of the U.S. EPA's granting of removal credits;

(2) 40 CFR Part 25, "Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act", as in effect on July 1, 2001 [1994], for public participation for enforcement of pretreatment standards;

(3) 40 CFR Part 130, "Water Quality Planning and Management", as in effect on July 1, 2001 for regional facility plans;

(4) 40 CFR Part 131, "Water Quality Standards", as in effect on July 1, 2001 for water quality management plans;

(5) ~~40 CFR 128.140(b), "Pretreatment Standards: Time for compliance", as in effect on July 1, 1977, for the reporting of discharges by specified pretreatment plants. This document is available from the Kentucky Division of Water and the University of Kentucky Law School Library, Lexington, Kentucky;~~

~~40 CFR Part 136, "Test Procedures for the Analysis of Pollutants", as in effect on July 1, 2001 [September 11, 1992], for sampling and analysis techniques;~~

(6) 40 CFR Part 258, "Criteria for Municipal Solid Waste Landfills", as in effect on July 1, 2001 for sewage sludge standards;

~~(7) 40 CFR Part 261, "Identification and Listing of Hazardous Waste", as in effect on July 1, 2001 [February 18, 1994], for hazardous waste determinations;~~

(8) 40 CFR Chapter I, Subchapter N, Parts 401 et seq., "Federal Effluent Limitations and Standards and New Source Performance Standards", as in effect on July 1, 2001;

(9) ~~40 CFR Part 403, Appendix A, "Program Guidance Memorandum" as in effect on July 1, 2001 [1993], for claiming consistent removal for correcting conditions resulting in untreated discharges by a POTW;~~

~~(10) 40 CFR Part 403, Appendix D, "Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Waste stream Formula" as in effect on July 1, 2001 [1993], for the list of process waste streams that were or could have been entirely exempted by the U.S. EPA; and~~

(11) ~~40 CFR Part 503, "Standards for the Use or Disposal of Sewage Sludge", as in effect on August 4, 1999 [July 1, 1993], for the eligibility of specific pollutants for removal credits.~~

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: May 6, 2002

FILED WITH LRC: May 9, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for June 25, 2002, 9:30 a.m. in the Franklin County Extension Office, 101 Lakeview Court, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by June 18, 2002, 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 provided 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 close of business on June 18, 2002 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:** Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey W. Pratt, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes pretreatment requirements for certain municipal wastewater treatment programs.

(b) The necessity of this administrative regulation: This administrative regulation was needed because all NPDES delegated states must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes a pretreatment program that controls pollutants that could inhibit or pass through municipal treatment facilities. This helps to implement the pollution prevention goals of KRS Chapter 224.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a program to control pollutants that may inhibit or pass through municipal treatment facilities. This is consistent with the goals of KRS Chapter 224.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this administrative regulation: This amendment will correct and update the regulation to make it compatible with the corresponding federal regulation.

(b) The necessity of the amendment to this administrative regulation: If this administrative regulation is not amended as proposed the state regulation will continue to be incompatible with the corresponding federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation still provides for water pollution control as authorized under KRS Chapter 224.

(d) How the amendment will assist in the effective administration of the statutes: The corrected and updated regulation will be compatible with the corresponding federal regulations which will aid in carrying out the goals of KRS Chapter 224.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to 77 permitted entities which are mainly local governmental organizations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact of this administrative regulation will be nonexistent because the new requirements went into effect when the corresponding federal regulations were adopted.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The first year, the cabinet will incur no additional costs.

(b) On a continuing basis: There will be no additional costs attributable to this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no change in the funding sources due to this amended administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amended ad-

ministrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. To the extent that the corresponding federal regulations provided for tiering, these amendments are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to obtain delegation of the federal NPDES permit program.

2. State compliance standards. This regulation amendment establishes state standards that are the same as the corresponding federal standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, this regulation does not establish any requirements stricter than that established by the corresponding federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standards are being proposed.

## FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect 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. This administrative regulation relates to those entities that operate facilities that discharge into waters of the Commonwealth.

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. None; since this regulation amendment merely provides for compatibility with corresponding federal regulations which have already gone into effect.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amendment)

### 401 KAR 5:060. KPDES application requirements.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, ~~224.10-100, 224.16-050,~~ 224.70-100, 224.70-120, 224.99-010, 40 CFR 35.2005(b)(20), 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401 et seq., 33 USC 1251 et seq., 1314, 1315(b), 1324(a), 1329(a), 1344, 1401 et seq., 42 USC 300h et seq., 6901 et seq., 6924(u), 6928(h), 7412, 7470 to 7492, 7501 to 7515, 11023 ~~224.70-110~~

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, 40 CFR 35.2005(b)(20), 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401 et seq., 33 USC 1251 et seq., 1314, 1315(b), 1324(a), 1329(a), 1344, 1401 et seq., 42 USC 300h et seq., 6901 et seq., 6924(u), 6928(h)

7412, 7470 to 7492, 7501 to 7515, 11023

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 further empowers the cabinet to issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act, [43 USC Section 1251 et seq.] subject to the conditions imposed in 33 USC Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This administrative regulation sets forth the application requirements for all KPDES permits and contains additional requirements for general and specific categories of dischargers.

Section 1. Applying for a KPDES Permit. (1) Application requirements. Any person who is required to have a permit, including new applicants and permittees with expiring permits, shall complete, sign, and submit an application to the cabinet as described in this administrative regulation and 401 KAR 5:055. On the date of KPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a KPDES permit, including those expired permits which EPA has continued in effect according to 40 CFR Section 122.6, continuation of expiring permits. For the purpose of this section, the cabinet shall accept the information required under subsection (7) of this section, for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

(2) Duty to apply.

(a) Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits under 401 KAR 5:055, Section 5, excluded under 401 KAR 5:055, Section 1(2), or a user of a privately owned treatment works unless the cabinet requires otherwise under 401 KAR 5:065, Section 2(12), shall submit a complete application, which shall include a BMP program if necessary under 401 KAR 5:065, Section 2(10) to the cabinet in accordance with this section.

(b) The appropriate application forms for the various discharger types are given below. The forms are incorporated by reference in Section 14 of this administrative regulation.

DISCHARGE TYPE	APPLICATION FORMS
POTWs	1 and A
Concentrated animal feeding operations and aquatic animal production facilities	1 and B
Manufacturing, commercial, mining and silvicultural discharges with process wastewater	1 and C
Manufacturing, commercial, mining and silvicultural discharges with non-process wastewater only	1 and Short C
Industrial storm water point source discharges	1 and F

(3) When a facility or activity is owned by one (1) person but is operated by another person, the operator shall obtain a permit.

(4) Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the cabinet. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities with storm water runoff from construction activities as defined in 401 KAR 5:002, Section 1, shall submit applications at least ninety (90) days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the ninety (90) or 180 day requirements to avoid delay. See also Section 12(2)(a)1g and 2. [Storm water discharges associated with construction activity shall submit applications at least ninety (90) days before the date on which construction is to com-

mence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the ninety (90) or 180 day requirements to avoid delay.]

(5) Duty to reapply.

(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the cabinet. The cabinet shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that the cabinet may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date.

(c) Continuation of expiring permits.

1. The conditions of an expired permit continue in force until the effective date of a new permit if:

a. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

b. The cabinet, through no fault of the permittee, does not issue a new permit with an effective date under 401 KAR 5:075, Section 11, on or before the expiration date of the previous permit.

2. Effect. Permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

3. Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit the cabinet may do any of the following:

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under 401 KAR 5:075, Section 3(2);

c. Issue a new permit under 401 KAR 5:075 with appropriate conditions; or

d. Take other actions authorized by KRS Chapter 224 and these administrative regulations.

(6) Completeness. The cabinet shall not issue a permit before receiving a complete application for a permit except for KPDES general permits. An application for a permit is complete when the cabinet receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

(7) Information requirements. All applicants for KPDES permits shall provide the following information to the cabinet, using the application form provided by the cabinet. Additional information required of applicants is set forth in Sections 2 through 5 of this administrative regulation.

(a) The activities conducted by the applicant which require it to obtain a KPDES permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) Up to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The owner's or operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

(e) A listing of all existing environmental permits.

(f) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(g) A brief description of the nature of the business.

(8) KPDES permit fees. As provided for in KRS 224.70-120, KPDES applications shall include a filing fee of twenty (20) percent of the total fee applicable to the following categories:

(a) Major industry;

- (b) Minor industry;
- (c) Nonprocess industry;
- (d) Large, nonpublicly-owned treatment works;
- (e) Intermediate, nonpublicly-owned treatment works;
- (f) Small, nonpublicly-owned treatment works;
- (g) Agriculture; and
- (h) Surface mining operation.

Section 2. Application Requirements for Manufacturing, Commercial, Mining, and Silvicultural Dischargers. Manufacturing, commercial, mining, and silvicultural dischargers applying for KPDES permits, except for those facilities subject to the requirements of Section 3 of this administrative regulation, shall provide the following information to the cabinet, using the appropriate application forms as specified in Section 1 of this administrative regulation.

(1) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds and the name of the receiving water.

(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subsection (3) of this section. The water balance shall provide approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(3) Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor or distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation shall be indicated.

(4) Intermittent flows. If any of the discharges described in subsection (3) of this section are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage or leaks.

(5) Maximum production. If an effluent guideline promulgated under Section 304 of CWA, 33 USC 1314 applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure shall reflect the actual production of the facility as required by 401 KAR 5:065, Section 3(2).

(6) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection, except information on storm water discharges which is to be provided as specified in Section 12 of this administrative regulation.

(a) When quantitative data for a pollutant are required, the applicant shall collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but shall provide a description of the method. When an applicant has two (2) or more outfalls with substantially identical effluents, the cabinet may allow the applicant to test only one (1) outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (f) and (g) of this subsection that an applicant shall provide quantitative data for certain pollutants known to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report these pollutants

as present. Grab samples shall be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, twenty-four (24) hour composite samples shall be used. However, a minimum of one (1) grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours. In addition, for discharges other than storm water discharges, the cabinet may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is not feasible and that the minimum of four (4) grab samples shall be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than one-tenth (0.1) inch and at least seventy-two (72) hours from the previously measurable (greater than one-tenth (0.1) inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed fifty (50) percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three (3) hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three (3) sample aliquots taken in each hour of discharge for the entire discharge or for the first three (3) hours of the discharge, with each aliquot being separated by a minimum period of fifteen (15) minutes. Applicants submitting permit applications for storm water discharges under Section 12(3) of this administrative regulation may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the cabinet. However, a minimum of one (1) grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours. For a flow-weighted composite sample, only one (1) analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data shall be reported for the grab sample taken during the first thirty (30) minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in Section 12(2)(a) of this administrative regulation. For all storm water permit applicants taking flow-weighted composites, quantitative data shall be reported for all pollutants specified in Section 12 of this administrative regulation except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The cabinet may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis. An applicant knows or has reason to know that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.

(b)1. Every applicant shall report quantitative data for every outfall for the following pollutants:

- Biochemical oxygen demand (BOD)
- Chemical oxygen demand
- Total organic carbon
- Total suspended solids
- Ammonia, as N
- Temperature both winter and summer
- pH

2. The cabinet may waive the reporting requirements for individual point sources or for a particular industry category for one (1) or more of the pollutants listed in subparagraph 1 of this paragraph if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(c) Each applicant with processes in one (1) or more of the fol-



lowing primary industry categories contributing to a discharge shall report quantitative data for the following pollutants in each outfall containing process wastewater:

1. Adhesives and sealants.
2. Aluminum forming.
3. Auto and other laundries.
4. Battery manufacturing.
5. Coal mining.
6. Coil coating.
7. Copper forming.
8. Electrical and electronic components.
9. Electroplating.
10. Explosives manufacturing.
11. Foundries.
12. Gum and wood chemicals.
13. Inorganic chemicals manufacturing.
14. Iron and steel manufacturing.
15. Leather tanning and finishing.
16. Mechanical products manufacturing.
17. Nonferrous metals manufacturing.
18. Ore mining.
19. Organic chemicals manufacturing.
20. Paint and ink formulation.
21. Pesticides.
22. Petroleum refining.
23. Pharmaceutical preparations.
24. Photographic equipment and supplies.
25. Plastics processing.
26. Plastic and synthetic materials manufacturing.
27. Porcelain enameling.
28. Printing and publishing.
29. Pulp and paper mills.
30. Rubber processing.
31. Soap and detergent manufacturing.
32. Steam electric power plants.
33. Textile mills.
34. Timber products processing.

(d) Analytical results for the organic toxic pollutants in the fractions designated in Section 8(1) of this administrative regulation for the applicant's industrial category or categories shall be provided unless the applicant qualifies as a small business under subsection (8) of this section. Section 8(2) of this administrative regulation lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography and mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

(e) Analytical results for the pollutants listed in Section 8(3) of this administrative regulation (the toxic metals, cyanide, and total phenols) shall be provided.

(f) 1. Each applicant shall indicate whether it knows or has reason to know that any of the pollutants in Section 8(4) of this administrative regulation (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant shall report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant shall either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

2. Each applicant shall indicate whether it knows or has reason to know that any of the pollutants listed in Section 8(2) or (3) of this administrative regulation (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (b) of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of ten (10) ppb or greater the applicant shall report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four (4) pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant shall report quantitative data. For every pollutant expected to be discharged in concentrations less than ten (10) ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in

concentrations less than 100 ppb, the applicant shall either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subsection (8) of this section is not required to analyze for pollutants listed in Section 8(2) of this administrative regulation (the organic toxic pollutants).

(g) Each applicant shall indicate whether it knows or has reason to know that any of the pollutants in Section 8(5) of this administrative regulation (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

(h) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnell); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or
2. Knows or has reason to know that TCDD is or may be present in an effluent.

(8) Small business exemption. An applicant which qualifies as a small business under one (1) of the following criteria is exempt from the requirements in subsection (7)(b)1 or (c)1 of this section to submit quantitative data for the pollutants listed in Section 8(2) of this administrative regulation (the organic toxic pollutants):

(a) For coal mines, a probable total annual production of less than 100,000 tons per year.

(b) For all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter 1980 dollars).

(9) Used or manufactured toxics. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct shall be provided. The cabinet may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the cabinet has adequate information to issue the permit.

(10) Biological toxicity tests. An identification of any biological toxicity tests which the applicant knows or has reason to know have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge shall be provided.

(11) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by subsection (7) of this section, the identity of each laboratory or firm and the analyses performed shall be provided.

(12) Additional information. In addition to the information reported on the application form, applicants shall provide to the cabinet, at its request, such other information as the cabinet may reasonably require to assess the discharges of the facility and to determine whether to issue a KPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

Section 3. Application Requirements for Manufacturing, Commercial, Mining and Silvicultural Facilities which Discharge Only Nonprocess Wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for KPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the cabinet, using application forms provided by the cabinet:

(1) Outfall location. Outfall number, latitude and longitude to the nearest fifteen (15) seconds, and the name of the receiving water.

(2) Discharge date for new dischargers. Date of expected commencement of discharge.

(3) Type of waste. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives, if any, that are used or expected to be used upon commence-



ment of operations, along with their composition if existing composition is available.

(4) Effluent characteristics.

(a) The applicant shall provide quantitative data for the pollutants or parameters listed below, unless testing is waived by the cabinet. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and shall include maximum daily value, average daily value, and number of measurements taken. The applicant shall collect and analyze samples in accordance with 40 CFR Part 136. Grab samples shall be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, twenty-four (24) hour composite samples shall be used. New dischargers shall include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels shall be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

1. Biochemical oxygen demand (BOD).
2. Total suspended solids (TSS).
3. Fecal coliform, if known to be present or if sanitary waste is or will be discharged.
4. Total residual chlorine, if chlorine is used.
5. Oil and grease.
6. Chemical oxygen demand (COD), if noncontact cooling water is or will be discharged.
7. Total organic carbon (TOC), if noncontact cooling water is or will be discharged.
8. Ammonia, as N.
9. Discharge Flow.
10. pH.
11. Temperature, winter and summer.

(b) The cabinet may waive the testing and reporting requirements for any of the pollutants or flow listed in paragraph (a) of this subsection if the applicant submits a request for such a waiver before or with the application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

(c) The requirements of paragraph (a) of this subsection that an applicant shall provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant shall report these pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 401 KAR 5:065, Section 3(7) are met.

(5) Flow. A description of the frequency of flow and duration of any seasonal or intermittent discharge, except for storm water runoff, leaks, or spills.

(6) Treatment system. A brief description of any system used or to be used.

(7) Optional information. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 401 KAR 5:065, Section 3(7).

(8) Certification. Signature of certifying official under Section 9 of this administrative regulation.

Section 4. Application Requirements for Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities. Concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the cabinet, using the applicable application form provided by the cabinet:

(1) For concentrated animal feeding operations:

(a) The type and number of animals in open confinement and housed under roof.

(b) The number of acres used for confinement feeding.

(c) The design basis for the runoff diversion and control system, if one (1) exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(2) For concentrated aquatic animal production facilities:

(a) The maximum daily and average monthly flow from each outfall.

(b) The number of ponds, raceways, and similar structures.

(c) The name of the receiving water and the source of intake water.

(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(e) The calendar month of maximum feeding and the total mass of food fed during that month.

Section 5. Application Requirements for New and Existing POTWs. Unless otherwise indicated, all POTWs and other dischargers designated by the cabinet shall provide, at a minimum, the information in this section to the cabinet, using KPDES Form A or another application form provided by the cabinet. Permit applicants shall submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the cabinet. The cabinet may waive any requirement of this paragraph if it has access to substantially identical information. The cabinet may also waive any requirement of this paragraph that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator shall include the cabinet's justification for the waiver. A regional administrator's disapproval of the cabinet's proposed waiver does not constitute final agency action, but does provide notice to the cabinet and permit applicant(s) that EPA may object to any cabinet-issued permit issued in the absence of the required information.

(1) Basic application information. All applicants shall provide the following information:

(a) Facility information. Name, mailing address, and location of the facility for which the application is submitted;

(b) Applicant information. Name, mailing address, and telephone number of the applicant, and an indication as to whether the applicant is the facility's owner, operator, or both;

(c) Existing environmental permits. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

1. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C, 42 USC 6901 et seq.;

2. Underground Injection Control program under the Safe Drinking Water Act (SDWA), 42 USC 300(h) et seq.;

3. KPDES program pursuant to KRS Chapter 224;

4. Prevention of Significant Deterioration (PSD) program under the Clean Air Act, 42 USC 7470 to 7492;

5. Nonattainment program under the Clean Air Act, 42 USC 7501 to 7515;

6. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act, 42 USC 7412;

7. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act, 33 USC 1401 et seq.;

8. Dredge or fill permits under section 404 of the CWA, 33 USC 1344; and

9. Other relevant environmental permits;

(d) Population. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

(e) Flow rate. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three (3) years;

(f) Collection system. Identification of types of collection systems used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

(g) Outfalls and other discharge or disposal methods. The following information for outfalls to waters of the Commonwealth and other discharge or disposal methods:

1. For effluent discharges to waters of the Commonwealth, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

2. For wastewater discharged to surface impoundments:

a. The location of each surface impoundment;

b. The average daily volume discharged to each surface impoundment; and

- c. Whether the discharge is continuous or intermittent;
- 3. For wastewater applied to the land:
  - a. The location of each land application site;
  - b. The size of each land application site, in acres;
  - c. The average daily volume applied to each land application site, in gallons per day; and

- d. Whether land application is continuous or intermittent;
- 4. For effluent sent to another facility for treatment prior to discharge:
  - a. The means by which the effluent is transported;
  - b. The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

- c. The name, mailing address, contact person, phone number, and KPDES permit number, if any, of the receiving facility; and
- d. The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and
- 5. For wastewater disposed of in a manner not included in subparagraphs 1 through 4 of this paragraph (e.g., underground percolation, underground injection):
  - a. A description of the disposal method, including the location and size of each disposal site, if applicable;
  - b. The annual average daily volume disposed of by this method, in gallons per day; and

- c. Whether disposal through this method is continuous or intermittent;
- (2) Additional Information. All applicants with a design flow greater than or equal to one-tenth (0.1) mgd shall provide the following information:
  - (a) Inflow and infiltration. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;
  - (b) Topographic map. A topographic map, or other map if a topographic map is unavailable, extending at least one (1) mile beyond property boundaries of the treatment plant, including all unit processes and showing:
    - 1. Treatment plant area and unit processes;
    - 2. The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;
    - 3. Each well where fluids from the treatment plant are injected underground;
    - 4. Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within one-quarter (1/4) mile of the property boundaries of the treatment plant;
    - 5. Sewage sludge management facilities including on-site treatment, storage, and disposal sites; and
    - 6. Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

- (c) Process flow diagram or schematic.
  - 1. A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and
  - 2. A narrative description of the diagram; and
- (d) Scheduled improvements, schedules of implementation. The following information regarding scheduled improvements:
  - 1. The outfall number of each outfall affected;
  - 2. A narrative description of each required improvement;
  - 3. Scheduled or actual dates of completion for the following:
    - a. Commencement of construction;
    - b. Completion of construction;
    - c. Commencement of discharge; and
    - d. Attainment of operational level;
  - 4. A description of permits and clearances concerning other federal and state requirements;

- (3) Information on effluent discharges. Each applicant shall provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:
  - (a) Description of outfall. The following information about each outfall:
    - 1. Outfall number;
    - 2. State, county, and city or town in which outfall is located;
    - 3. Latitude and longitude, to the nearest second;
    - 4. Distance from shore and depth below surface;
    - 5. Daily flow rate, in million gallons per day;
    - 6. The following information for each outfall with a seasonal or periodic discharge:
      - a. Number of times per year the discharge occurs;
      - b. Duration of each discharge;
      - c. Flow of each discharge;
      - d. Months in which discharge occurs; and
      - 7. Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used;
    - (b) Description of receiving waters. The following information, if known, for each outfall through which effluent is discharged to waters of the Commonwealth:
      - 1. Name of receiving water;
      - 2. Name of watershed or river or stream system and the United States Soil Conservation Service fourteen (14) digit watershed code;
      - 3. Name of the State Management River Basin and United States Geological Survey eight (8) digit hydrologic cataloging unit code; and
      - 4. Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable);
    - (c) Description of treatment. The following information describing the treatment provided for discharges from each outfall to waters of the Commonwealth:
      - 1. The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:
        - a. Design biochemical oxygen demand (BOD5 or CBOD5) removal percent;
        - b. Design suspended solids (SS) removal percent; and, where applicable,
        - c. Design phosphorus (P) removal percent;
        - d. Design nitrogen (N) removal percent; and
        - e. Any other removals that an advanced treatment system is designed to achieve.
      - 2. A description of the type of disinfection used, and whether the treatment plant dechlorinates if disinfection is accomplished through chlorination;
      - (4) Effluent monitoring for specific parameters.
        - (a) As provided in paragraphs (b) through (j) of this subsection, all applicants shall submit to the cabinet effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the Commonwealth, except for CSOs. The cabinet may allow applicants to submit sampling data for only one (1) outfall on a case-by-case basis, where the applicant has two (2) or more outfalls with substantially identical effluent. The cabinet may also allow applicants to composite samples from one (1) or more outfalls that discharge into the same mixing zone;
        - (b) All applicants shall sample and analyze for the pollutants listed in Section 8(6), Table VI of this administrative regulation;
        - (c) All applicants with a design flow greater than or equal to one-tenth (0.1) of one (1) mgd shall sample and analyze for the pollutants listed in Section 8(7), Table VII of this administrative regulation. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine from Table VII;
        - (d) The following applicants shall sample and analyze for the pollutants listed in Section 8(8), Table VIII, of this administrative regulation, and for any other pollutants for which the cabinet or EPA have established water quality standards applicable to the receiving waters:
          - 1. All POTWs with a design flow rate equal to or greater than 1,000,000 gallons per day;
          - 2. All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;
          - 3. Other POTWs, as required by the cabinet;
        - (e) The cabinet may require sampling for additional pollutants, as appropriate, on a case-by-case basis;
        - (f) Applicants shall provide data from a minimum of three (3) samples taken within four and one-half (4 1/2) years prior to the date

- (a) Commencement of construction;
- b. Completion of construction;
- c. Commencement of discharge; and
- d. Attainment of operational level;
- 4. A description of permits and clearances concerning other federal and state requirements;

- (3) Information on effluent discharges. Each applicant shall provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:
  - (a) Description of outfall. The following information about each outfall:
    - 1. Outfall number;
    - 2. State, county, and city or town in which outfall is located;
    - 3. Latitude and longitude, to the nearest second;
    - 4. Distance from shore and depth below surface;
    - 5. Daily flow rate, in million gallons per day;
    - 6. The following information for each outfall with a seasonal or periodic discharge:
      - a. Number of times per year the discharge occurs;
      - b. Duration of each discharge;
      - c. Flow of each discharge;
      - d. Months in which discharge occurs; and
      - 7. Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used;
    - (b) Description of receiving waters. The following information, if known, for each outfall through which effluent is discharged to waters of the Commonwealth:
      - 1. Name of receiving water;
      - 2. Name of watershed or river or stream system and the United States Soil Conservation Service fourteen (14) digit watershed code;
      - 3. Name of the State Management River Basin and United States Geological Survey eight (8) digit hydrologic cataloging unit code; and
      - 4. Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable);
    - (c) Description of treatment. The following information describing the treatment provided for discharges from each outfall to waters of the Commonwealth:
      - 1. The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:
        - a. Design biochemical oxygen demand (BOD5 or CBOD5) removal percent;
        - b. Design suspended solids (SS) removal percent; and, where applicable,
        - c. Design phosphorus (P) removal percent;
        - d. Design nitrogen (N) removal percent; and
        - e. Any other removals that an advanced treatment system is designed to achieve.
      - 2. A description of the type of disinfection used, and whether the treatment plant dechlorinates if disinfection is accomplished through chlorination;
      - (4) Effluent monitoring for specific parameters.
        - (a) As provided in paragraphs (b) through (j) of this subsection, all applicants shall submit to the cabinet effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the Commonwealth, except for CSOs. The cabinet may allow applicants to submit sampling data for only one (1) outfall on a case-by-case basis, where the applicant has two (2) or more outfalls with substantially identical effluent. The cabinet may also allow applicants to composite samples from one (1) or more outfalls that discharge into the same mixing zone;
        - (b) All applicants shall sample and analyze for the pollutants listed in Section 8(6), Table VI of this administrative regulation;
        - (c) All applicants with a design flow greater than or equal to one-tenth (0.1) of one (1) mgd shall sample and analyze for the pollutants listed in Section 8(7), Table VII of this administrative regulation. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine from Table VII;
        - (d) The following applicants shall sample and analyze for the pollutants listed in Section 8(8), Table VIII, of this administrative regulation, and for any other pollutants for which the cabinet or EPA have established water quality standards applicable to the receiving waters:
          - 1. All POTWs with a design flow rate equal to or greater than 1,000,000 gallons per day;
          - 2. All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;
          - 3. Other POTWs, as required by the cabinet;
        - (e) The cabinet may require sampling for additional pollutants, as appropriate, on a case-by-case basis;
        - (f) Applicants shall provide data from a minimum of three (3) samples taken within four and one-half (4 1/2) years prior to the date

of the permit application. Samples shall be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The cabinet shall require additional samples, as appropriate, on a case-by-case basis.

(g) All existing data for pollutants specified in paragraphs (b) through (e) of this subsection that is collected within four and one-half (4 1/2) years of the application shall be included in the pollutant data summary submitted by the applicant. If the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary to summarize all data collected within one (1) year of the application for the pollutant.

(h) Applicants shall collect samples of effluent and analyze the samples for pollutants in accordance with analytical methods approved under 40 CFR part 136 unless an alternative is specified in the existing KPDES permit. Grab samples shall be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, twenty-four (24) hour composite samples shall be used. For a composite sample, only one (1) analysis of the composite of aliquots is required.

(i) The effluent monitoring data provided shall include at least the following information for each parameter:

1. Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;
2. Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;
3. The analytical method used; and
4. The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

(j) Unless otherwise required by the cabinet, metals shall be reported as total recoverable.

(5) Effluent monitoring for whole effluent toxicity.

(a) All applicants shall provide an identification of any whole effluent toxicity tests conducted during the four and one-half (4 1/2) years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

(b) As provided in paragraphs (c) through (i) of this subsection, the following applicants shall submit to the cabinet the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

1. All POTWs with design flow rates greater than or equal to 1,000,000 gallons per day;
2. All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;
3. Other POTWs, as required by the cabinet, based on consideration of the following factors:

a. The variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information, the type of treatment plant, and types of industrial contributors;

b. The ratio of effluent flow to receiving stream flow;

c. Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

d. Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding state resource water; or

e. Other considerations, including but not limited to the history of toxic impacts and compliance problems at the POTW, that the cabinet determines could cause or contribute to adverse water quality impacts.

(c) Where the POTW has two (2) or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the cabinet may allow applicants to submit whole effluent toxicity data for only one (1) outfall on a case-by-case basis. The cabinet may also allow applicants to composite samples from one (1) or more outfalls that discharge into the same mixing zone.

(d) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (b) of this subsection shall provide:

1. Results of a minimum of four (4) quarterly tests for a year, from the year preceding the permit application; or
2. Results from four (4) tests performed at least annually in the

four and one-half (4 1/2) year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the cabinet.

(e) Applicants shall conduct tests with no less than two (2) species of fish, invertebrates, plants, etc., and test for acute or chronic toxicity, depending on the range of receiving water dilution. The applicant shall conduct acute or chronic testing based on the following dilutions:

1. Acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone;

2. Acute or chronic toxicity testing if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone. Acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1); and

3. Chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone.

(f) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (b) of this subsection shall provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

(g) Applicants shall provide the results using the form provided by the cabinet, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to paragraph (b) of this subsection for which such information has not been reported previously to the cabinet.

(h) Whole effluent toxicity testing conducted pursuant to paragraph (b) of this subsection shall be conducted using methods approved under 40 CFR part 136.

(i) For whole effluent toxicity data submitted to the cabinet within four and one-half (4 1/2) years prior to the date of the application, applicants shall provide the dates on which the data were submitted and a summary of the results.

(j) Each POTW required to perform whole effluent toxicity testing pursuant to paragraph (b) of this subsection shall provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half (4 1/2) years revealed toxicity.

(6) Industrial discharges. Applicants shall submit the following information about industrial discharges to the POTW:

(a) Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

(b) POTWs with one (1) or more SIUs shall provide the following information for each SIU, as defined at 401 KAR 5:002 Section 1, that discharges to the POTW:

1. Name and mailing address;
2. Description of all industrial processes that affect or contribute to the SIU discharge;
3. Principal products and raw materials of the SIU that affect or contribute to the SIU discharge;
4. Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;
5. Whether the SIU is subject to local limits;
6. Whether the SIU is subject to categorical standards, and if so, under which categories and subcategories; and
7. Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past four and one-half (4 1/2) years.

(c) The information required in paragraphs (6)(a) and (b) of this section may be waived by the cabinet for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in paragraphs (6)(a) and (b) of this section.

1. An annual report submitted within one (1) year of the application; or

2. A pretreatment program;

(d) POTWs with approved pretreatment programs shall provide a written technical evaluation of the need to revise local limits in accordance with 401 KAR 5:057.

(7) Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), 42 USC 6901 et seq., Comprehensive Environmental Response, Compensation, and Li-

ability Act (CERCLA), 42 USC 6901 et seq., or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site shall provide the following information:

(a) If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR part 261, the applicant shall report the following:

1. The method by which the waste is received, and
2. The hazardous waste number and amount received annually of each hazardous waste;

(b) If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and sections 3004(u) or 3008(h) of RCRA, 42 USC 6924(u) and 6928(h), the applicant shall report the following:

1. The identity and description of the sites or facilities at which the wastewater originates;
2. The identities of the wastewater's hazardous constituents, if known; and
3. The extent of treatment, if any, the wastewater receives or will receive before entering the POTW;

(c) Applicants are exempt from the requirements of paragraph (b) of this subsection if they receive no more than fifteen (15) kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e).

(8) Combined sewer overflows (CSO). Each applicant with combined sewer systems shall provide the following information:

(a) Combined sewer system information. The following information regarding the combined sewer system:

1. System map. A map indicating the location of the following:

- a. All CSO discharge points;
- b. Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding state resource waters); and
- c. Waters supporting threatened and endangered species potentially affected by CSOs; and

2. System diagram. A diagram of the combined sewer collection system that includes the following information:

- a. The location of major sewer trunk lines, both combined and separate sanitary;
- b. The locations of points where separate sanitary sewers feed into the combined sewer system;
- c. In-line and off-line storage structures;
- d. The locations of flow-regulating devices; and
- e. The locations of pump stations.

(b) Information on CSO outfalls. The following information for each CSO discharge point covered by the permit application:

1. Description of outfall. The following information on each outfall:

- a. Outfall number;
- b. State, county, and city or town in which outfall is located;
- c. Latitude and longitude, to the nearest second; and
- d. Distance from shore and depth below surface;
- e. Whether the applicant monitored any of the following in the

past year for this CSO:

- (i) Rainfall;
- (ii) CSO flow volume;
- (iii) CSO pollutant concentrations;
- (iv) Receiving water quality;
- (v) CSO frequency; and
- f. The number of storm events monitored in the past year;
2. CSO events. The following information about CSO overflows

from each outfall:

- a. The number of events in the past year;
- b. The average duration per event, if available;
- c. The average volume per CSO event, if available; and
- d. The minimum rainfall that caused a CSO event, if available, in

the last year;

3. Description of receiving waters. The following information about receiving waters:

- a. Name of receiving water;
- b. Name of watershed or stream system and the United States Soil Conservation Service watershed fourteen (14) digit code if known; and

c. Name of State Management River Basin and the United States Geological Survey hydrologic cataloging unit eight (8) digit code if known; and

4. CSO operations. A description of any known water quality impacts on the receiving water caused by the CSO including permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable water quality standard;

(9) Contractors. All applicants shall provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility; and

(10) Signature. All applications shall be signed by a certifying official in compliance with Section 9 of this administrative regulation. (1) The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the cabinet:

- (a) All POTWs with design influent flows equal to or greater than 1,000,000 gallons per day; and
- (b) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(2) In addition to the POTWs listed in subsection (1) of this section, the cabinet may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

- (a) The variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information, the type of treatment facility, and types of industrial contributors;
- (b) The seven (7) day, ten (10) year (7Q<sub>10</sub>) low flow value of the receiving stream;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the water body segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; or

(e) Other considerations, including but not limited to the history of toxic impact and compliance problems at the POTW, which the cabinet determines could cause or contribute to adverse water quality impacts.

(3) For POTWs required under subsection (1) or (2) of this section to conduct toxicity testing, POTWs shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. This testing shall have been conducted since the last KPDES permit reissuance or permit modification under 401 KAR 5:070, Section 6, whichever occurred later.

(4) All POTWs with approved pretreatment programs shall provide a written technical evaluation of the need to revise local limits under 401 KAR 5:057.

Section 6. Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three (3) years from the date the application is signed.

Section 7. Service of Process. Every applicant and permittee shall provide the cabinet an address for receipt of any legal document for service of process. The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet may tender any legal notice including but not limited to service of process in connection with any enforcement action.

Section 8. KPDES Application Testing Requirements. (1) Table 1 - Gas Chromatography/Mass Spectroscopy (GC-MS) Fractions per Industrial Category [4]

Industrial category	GC-MS Fraction*			
	Volatile	Acid	Neutral	Pesticide
Adhesives & sealants	(1)	(1)	(1)	
Aluminum forming	(1)	(1)	(1)	
Auto & other laundries	(1)	(1)	(1)	(1)

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Battery manufacturing	(1)		(1)	
Coal mining	(1)	(1)	(1)	(1)
Coil Coating	(1)	(1)	(1)	
Copper forming	(1)	(1)	(1)	
Electric & electronic compounds	(1)	(1)	(1)	(1)
Electroplating	(1)	(1)	(1)	
Explosives manufacturing		(1)	(1)	
Foundries	(1)	(1)	(1)	
Gum & Wood	(1)	(1)	(1)	(1)
Inorganic chemicals manufacturing	(1)	(1)	(1)	
Iron & steel manufacturing	(1)	(1)	(1)	
Leather tanning & finishing	(1)	(1)	(1)	(1)
Mechanical products manufacturing	(1)	(1)	(1)	
Nonferrous metals manufacturing	(1)	(1)	(1)	(1)
Ore mining	(1)	(1)	(1)	(1)
Organic chemicals manufacturing	(1)	(1)	(1)	(1)
Paint & ink formulation	(1)	(1)	(1)	(1)
Pesticides	(1)	(1)	(1)	(1)

Petroleum refining	(1)	(1)	(1)	(1)
Pharmaceutical preparations	(1)	(1)	(1)	
Photographic equipment & supplies	(1)	(1)	(1)	(1)
Plastic & synthetic materials manufacturing	(1)	(1)	(1)	(1)
Plastic processing	(1)			
Porcelain enameling	(1)		(1)	(1)
Printing & publishing	(1)	(1)	(1)	(1)
Pulp & paperboard mills	(1)	(1)	(1)	(1)
Rubber processing	(1)	(1)	(1)	
Soap & detergent manufacturing	(1)	(1)	(1)	
Steam electric power plants	(1)	(1)	(1)	
Textile mills	(1)	(1)	(1)	(1)
Timber products processing	(1)	(1)	(1)	(1)
Testing required				
Pollutants listed in Table II				

(2) Table II - Organic Toxic Pollutants in Each of Four (4) Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GC-MS)

Volatiles	Acid Compounds	Base/Neutral	Pesticides
1V acrolein	1A 2-chlorophenol	1B acenaphthene	1P aldrin
2V acrylonitrile	2A 2,4-dichlorophenol	2B acenaphthylene	2P alpha-BHC
3V benzene	3A 2,4-dimethylphenol	3B anthracene	3P beta-BHC
5V bromoform	4A 4,6-dinitro-o-cresol	4B benzidine	4P gamma-BHC
6V carbon tetrachloride	5A 2,4-dinitrophenol	5B benzo(a)anthracene	5P delta-BHC
7V chlorobenzene	6A 2-nitrophenol	6B benzo(a)pyrene	6P chlordane
8V chlorodibromomethane	7A 4-nitrophenol	7B 3,4-benzofluoranthene	7P 4,4'-DDT
9V chloroethane	8A p-chloro-m-cresol	8B benzo(ghi)perylene	8P 4,4'-DDE
10V 2-chloroethylvinyl ether	9A pentachlorophenol	9B benzo(k)fluoranthene	9P 4,4'-DDD
11V chloroform	10A phenol	10B bis(2-chloroethoxy)methane	10P dieldrin
12V dichlorobromomethane	11A 2,4,6-trichlorophenol	11B bis(2-chloroisopropyl)ether	11P alpha-endosulfan
14V 1,1-dichloroethane		12B bis(2-ethylhexyl)phthalate	12P beta-endosulfan
15V 1,2-dichloroethane		13B 4-bromophenyl phenyl ether	13P endosulfan sulfate
16V 1,1-dichloroethylene		14B butylbenzyl phthalate	14P endrin
17V 1,2-dichloropropane		15B 2-chloronaphthalene	15P endrin aldehyde
18V 1,3-dichloropropylene		16B 4-chlorophenyl phenyl ether	16P heptachlor
19V ethylbenzene		17B chrysene	17P heptachlor epoxide
20V methyl bromide		18B dibenzo(a,h)anthracene	18P PCB-1242
21V methyl chloride		19B 1,2-dichlorobenzene	19P PCB-1254
22V methylene chloride		20B 1,3-dichlorobenzene	20P PCB-1221
23V 1,1,2,2-tetrachloroethane		21B 1,4-dichlorobenzene	21P PCB-1232
24V tetrachloroethylene		22B 3,3'-dichlorobenzidine	22P PCB-1248
25V toluene		23B diethyl phthalate	23P PCB-1260
26V 1,2-trans-dichloroethylene		24B dimethyl phthalate	24P PCB-1016
27V 1,1,1-trichloroethane		25B di-n-butyl phthalate	25P toxaphene
28V 1,1,2-trichloroethane		26B 2,4-dinitrotoluene	
29V trichloroethylene		27B 2,6-dinitrotoluene	
31V vinyl chloride		28B di-n-octyl phthalate	
		29B 1,2-diphenylhydrazine (as azonbenzene)	
		30B fluoranthene	
		31B fluorene	
		32B hexachlorobenzene	
		33B hexachlorobutadiene	
		34B hexachlorocyclopentadiene	
		35B hexachloroethane	
		36B indeno(1,2,3-cd)pyrene	
		37B isophorone	
		38B naphthalene	
		39B nitrobenzene	
		40B N-nitrosodimethylamine	

		41B N-nitrosodi-n-propylamine 42B N-nitrosodiphenylamine 43B phenanthrene 44B pyrene 45B 1,2,4-trichlorobenzene	
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(3) Table III-Other Toxic Pollutants (Metals and Cyanide) and Total Phenols

Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total
Phenols, Total

(4) Table IV-Conventional and Nonconventional Pollutants Required to Be Tested by Existing Dischargers if Expected to be present

Bromide
Chlorine, Total Residual
Color
Fecal Coliform
Fluoride
Nitrate-Nitrite
Nitrogen, Total Organic
Oil and Grease
Phosphorus, Total
Radioactivity
Sulfate
Sulfide
Sulfite
Surfactants
Aluminum, Total
Barium, Total
Boron, Total
Cobalt, Total
Iron, Total
Magnesium, Total
Molybdenum, Total
Manganese, Total
Tin, Total
Titanium, Total

(5) Table V-Toxic Pollutants and Hazardous Substances Required To Be Identified by Existing Dischargers if Expected To Be Present

Toxic Pollutants	Hazardous Substances	Hazardous Substances, continued
Asbestos	Acetaldehyde Allyl alcohol Allyl chloride Amyl acetate Aniline Benzonitrile Benzyl chloride Butyl acetate Butylamine Captan Carbaryl Carbofuran Carbon disulfide Chlorpyrifos Coumaphos	Malathion Mercaptodimethur Methoxychlor Methyl mercaptan Methyl methacrylate Methyl parathion Mevinphos Mexacarbate Monoethyl amine Monomethyl amine Naled Napthenic acid Nitrotoluene Parathion Phenolsulfanate

Cresol Crotonaldehyde Cyclohexane 2,4-D (2,4-Dichlorophenoxy acetic acid) Diazinon Dicamba Dichlobenil Dichlone 2,2-Dichloropropionic acid Dichlorvos Diethyl amine Dimethyl amine Dinitrobenzene Diquat Disulfoton Diuron Epichlorohydrin Ethion Ehtylene diamine Ethylene dibromide Formaldehyde Furfural Guthion Isoprene Isopropanolamine Dodecylbenzenesulfonate Kelthane Kepone	Phosgene Propargite Propylene oxide Pyrethrins Quinoline Resorcinol Strontium Strychnine Styrene 2,4,5-T (2,4,5-Trichlorophenoxy acetic acid) TDE (Tetrachlorodiphenylethane) 2,4,5-TP(2-2,4,5-Trichlorophenoxy)propanoic acid Trichlorofan Triethanolamine dodecylbenzenesulfonate Triethylamine
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(6) Table VI - Effluent Parameters for All POTWs

Biochemical oxygen demand (BOD-5 or CBOD-5)
Fecal coliform
Design Flow Rate
PH
Temperature
Total suspended solids

(7) Table VII - Effluent Parameters for All POTWs with a Flow Equal to or Greater than 0.1 MGD

Ammonia (as N)
Chlorine (total residual, TRC)
Dissolved oxygen
Nitrate/Nitrite
Kjeldahl nitrogen
Oil and grease
Phosphorus
Total dissolved solids



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**(8) Table VIII - Effluent Parameters for Selected POTWs**

Volatile Organic Compounds	Acid Extractable Compounds	Base/Neutral Compounds	Metals (total recoverable), cyanide and total phenols
Acrolein	P-chloro-m-creso	Acenaphthene	Hardness
Acrylonitrile	2-chlorophenol	Acenaphthylene	Antimony
Benzene	2,4-dichlorophenol	Anthracene	Arsenic
Bromoform	2,4-dimethylphenol	Benidine	Beryllium
Carbon tetrachloride	4,6-dinitro-o-cresol	Benzo(a)anthracene	Cadmium
Chlorobenzene	2,4-dinitrophenol	Benzo(a)pyrene	Chromium
Chlorodibromomethane	2-nitrophenol	3,4 benzofluoranthene	Copper
Chloroethane	4-nitrophenol	Benzo(ghi)perylene	Lead
2-chloroethylvinyl ether	Pentachlorophenol	Benzo(k)fluoranthene	Mercury
Chloroform	Phenol	Bis (2-chloroethoxy) methane	Nickel
Dichlorobromomethane	2,4,6-trichlorophenol	Bis (2-chloroethyl) ether	Selenium
1,1-dichloroethane		Bis (2-chloroisopropyl) ether	Silver
1,2-dichloroethane		Bis (2-ethylhexyl) phthalate	Thallium
Trans-1,2-dichloroethylene		4-bromophenyl phenyl ether	Zinc
1,1-dichloroethylene		Butyl benzyl phthalate	Cyanide
1,2-dichloropropane		2-chloronaphthalene	Total phenolic compounds
1,3-dichloropropylene		4-chlorophenyl phenyl ether	
Ethylbenzene		Chrysene	
Methyl bromide		Di-n-butyl phthalate	
Methyl chloride		Di-n-octyl phthalate	
Methylene chloride		Dibenzo(a,h)anthracene	
1,1,1,2-tetrachloroethane		1,2-dichlorobenzene	
Tetrachloroethylene		1,3-dichlorobenzene	
Toluene		1,4-dichlorobenzene	
1,1,1-trichloroethane		3,3-dichlorobenzidine	
1,1,2-trichloroethane		Diethyl phthalate	
Trichloroethylene		Dimethyl phthalate	
Vinyl chloride		2,4-dinitrotoluene	
		2,6-dinitrotoluene	
		1,2-diphenylhydrazine	
		Fluoranthene	
		Fluorene	
		Hexachlorobenzene	
		Hexachlorobutadiene	
		Hexachlorocyclo-pentadiene	
		Hexachloroethane	
		Indeno(1,2,3-cd)pyrene	
		Isophorone	
		Naphthalene	
		Nitrobenzene	
		N-nitrosodi-n-propylamine	
		N-nitrosodimethylamine	
		N-nitrosodiphenylamine	
		Phenanthrene	
		Pyrene	
		1,2,4,-trichlorobenzene	

Section 9. Signatories to Permit Applications and Reports. (1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer is:

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

2. The manager of one (1) or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where [employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars), if] authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. [A copy of that authority shall be provided to the cabinet.]

(b) For a partnership or sole proprietorship: by a general partner

or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes:

1. The chief executive officer of the agency; or

2. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA).

(2) All reports required by permits, and other information requested by the cabinet shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(c) The written authorization is submitted to the cabinet.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section shall be submitted to the cabinet prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsections (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Section 10. Concentrated Animal Feeding Operations. (1) Permit requirement. Concentrated animal feeding operations are point sources subject to the KPDES permit program.

(2) Case-by-case designation of concentrated animal feeding operations.

(a) The cabinet may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the Commonwealth. In making this designation the cabinet shall consider the following factors:

1. The size of the animal feeding operation and the amount of wastes reaching waters of the Commonwealth;
2. The location of the animal feeding operation relative to waters of the Commonwealth;
3. The means of conveyance of animal wastes and process waste waters into waters of the Commonwealth;
4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the Commonwealth; and
5. Other relevant factors.

(b) No animal feeding operation with less than the numbers of animals defined in 401 KAR 5:002 [5:004] shall be designated as a concentrated animal feeding operation unless:

1. Pollutants are discharged into waters of the Commonwealth through a manmade ditch, flushing system, or other similar manmade device; or
2. Pollutants are discharged directly into waters of the Commonwealth which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals or their wastes confined in the operation.

(c) A permit application shall not be required from a concentrated animal feeding operation designated under this subsection until the cabinet has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

Section 11. Concentrated Aquatic Animal Production Facilities.

(1) Permit requirement. Concentrated aquatic animal production facilities, as set forth in this section, are point sources subject to the KPDES permit program.

(2) A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this section if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water fish species or other cold water aquatic animals, including, but not limited to, the Salmonidae family of fish; e.g., trout and salmon, in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

1. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feed-

ing.

(b) Warm water fish species or other warm water aquatic animals, including, but not limited to, the Ameiuride, Centrarchidae and Cyprinidae families of fish; e.g., respectively, catfish, sunfish and minnows, in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:

1. Closed ponds which discharge only during periods of excess runoff; or
  2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.
- (3) Case-by-case designation of concentrated aquatic animal production facilities.

(a) The cabinet may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the Commonwealth. In making this designation the cabinet shall consider the following factors:

1. The location and quality of the receiving waters of the Commonwealth;
2. The holding, feeding, and production capacities of the facility;
3. The quantity and nature of the pollutants reaching waters of the Commonwealth; and
4. Other relevant factors.

(b) A permit application shall not be required from a concentrated aquatic animal production facility designated under this subsection until the cabinet has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

Section 12. Storm Water Discharges. (1) Permit requirement.

(a) Prior to October 1, 1992, discharges composed entirely of storm water shall not be required to obtain a KPDES permit except:

1. A discharge with respect to which a permit has been issued prior to February 4, 1987;
2. A discharge associated with industrial activity (see also paragraph (d) of this subsection);
3. A discharge from a large municipal separate storm sewer system;
4. A discharge from a medium municipal separate storm sewer system; and
5. A discharge which the cabinet or the EPA regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Commonwealth. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (b) of this subsection or agricultural storm water runoff which is exempted from the definition of point source in 401 KAR 5:002 [5:004].

The cabinet may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the cabinet may consider the following factors:

- a. The location of the discharge with respect to waters of the Commonwealth;
- b. The size of the discharge;
- c. The quantity and nature of the pollutants discharged to waters of the Commonwealth; and
- d. Other relevant factors.

(b) The cabinet shall not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances including but not limited to pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of these operations.

(c) Large and medium municipal separate storm sewer systems.

1. Permits shall be obtained for all discharges from large and medium municipal separate storm sewer systems.
2. The cabinet may either issue one (1) system-wide permit

covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

3. The owner or operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system shall either:

a. Participate in a permit application, i.e., be a permittee or a copermitee, with one (1) or more other owner or operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

b. Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the owner or operator is responsible; or

c. A regional authority may be responsible for submitting a permit application under the following guidelines:

(i) The regional authority together with coapplicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time Part 1 of the application is due;

(ii) The permit applicant or coapplicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application;

(iii) Each of the owners or operators of municipal separate storm sewers within the systems defined in 401 KAR 5:002 [5:004], that are under the purview of the designated regional authority, shall comply with the application requirements of subsection (3) of this section.

4. One (1) permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The cabinet may issue one (1) system-wide permit covering all or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

5. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

6. Copermitees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are owners or operators.

(d) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of subsection (2) of this section, an owner or operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the owner or operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing this discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing KPDES permit number.

(e) Other municipal separate storm sewers. The cabinet may issue permits for municipal separate storm sewers that are designated under paragraph (a)5 of this subsection on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(f) Nonmunicipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a nonmunicipal or nonpublicly owned separate storm sewer system, the cabinet may issue: a single KPDES permit, with each discharger a copermitee to a permit issued to the owner or operator of the portion of the system that discharges into waters of the Commonwealth; or, individual permits to each discharger of

storm water associated with industrial activity through the nonmunicipal conveyance system.

1. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer shall be covered by an individual permit, or a permit issued to the owner or operator of the portion of the system that discharges to waters of the Commonwealth, with each discharger to the nonmunicipal conveyance a copermitee to that permit.

2. Where there is more than one (1) owner or operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity shall submit applications.

3. Any permit covering more than one (1) owner or operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(g) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that shall obtain KPDES permits in accordance with the procedures of Section 5 of this administrative regulation and are not subject to the provisions of this section.

(h) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under ~~(Title II, Title III or Title VI of)~~ the Clean Water Act, 33 USC 1251 et seq. See 40 CFR Part 35, Subpart I, Appendix A ~~(b)(2)(i)~~.

(i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by subsection (1)(a) of this section to obtain a permit, operators shall be required to obtain a KPDES permit only if:

1. The discharge is from a small MS4 required to be regulated pursuant to subsection (7) of this section;

2. The discharge is a storm water discharge associated with small construction activity pursuant to 401 KAR 5:002;

3. The cabinet, or the EPA Regional Administrator, determines that storm water controls are needed for the discharge based on wastewater allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

4. The cabinet, or the EPA Regional Administrator, determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Commonwealth.

(j) Operators of small MS4s designated pursuant to paragraph (i)1, 3, and 4 of this subsection shall seek coverage under an KPDES permit in accordance with subsections (8) through (10) of this section. Operators of nonmunicipal sources designated pursuant to paragraphs (i)2, 3, and 4 of this subsection shall seek coverage under an KPDES permit in accordance with subsection (2)(a) of this section.

(k) Operators of storm water discharges designated pursuant to paragraph (i)3 and 4 of this subsection shall apply to the cabinet for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the cabinet.

(2) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.

(a) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. ~~[shall apply for an individual permit, apply for a permit through a group application, or seek coverage under an issued storm water general permit.]~~ Facilities that are required to obtain an individual permit, or any discharge of storm water which the cabinet is evaluating for designation under paragraph (a)5 of this subsection and is not a municipal separate storm sewer, ~~[and which are not part of a group application described under subsection (2)(b) of this section,]~~ shall submit a KPDES application in accordance with the requirements of Section 3 of this administrative regulation as modified and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Form 1 and Form F. Applicants for discharges composed of storm water and nonstorm water shall submit Form 1, Form Short C, and Form F.

1. Except as provided in subparagraphs 2, 3, and 4 of this para-

graph the owner or operator of a storm water discharge associated with industrial activity subject to this section shall provide:

a. A site map showing topography, or indicating the outline of drainage areas served by the outfalls covered in the application if a topographic map is unavailable, of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall; each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities, including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34; each well where fluids from the facility are injected underground; springs; and other surface water bodies which receive storm water discharges from the facility;

b. An estimate of the area of impervious surfaces, including paved areas and building roofs, and the total area drained by each outfall, within a mile radius of the facility, and a narrative description of the following: significant materials that in the three (3) years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of the materials; materials management practices employed, in the three (3) years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

c. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of nonstorm water discharges which are not covered by a KPDES permit; tests for these nonstorm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

d. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three (3) years prior to the submittal of this application;

e. Quantitative data based on samples collected during storm events and collected in accordance with Section 3 of this administrative regulation from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(i) Any pollutant limited in an effluent guideline to which the facility is subject;

(ii) Any pollutant listed in the facility's KPDES permit for its process wastewater, if the facility is operating under an existing KPDES permit;

(iii) Oil and grease, pH, BOD, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(iv) Any information on the discharge required under Section 2(7)(f) and (g) of this administrative regulation;

(v) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm events sampled, and the method of flow measurement or estimation; and

(vi) The date and duration in hours of the storm events sampled, rainfall measurements or estimates of the storm event in inches which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event in hours;

f. Owners or operators of a discharge which is composed entirely of storm water are exempt from the requirements of Section 2(2), (3), (4), (5), and (7)(a), (b) and (e) of this administrative regulation; and

g. Owners or operators of new sources or new discharges which are composed in part or entirely of storm water shall include estimates for the pollutants or parameters listed in clause e of this subparagraph instead of actual sampling data, along with the source of

each estimate. Owners or operators of new sources or new discharges composed in part or entirely of storm water shall provide quantitative data for the parameters listed in clause e of this subparagraph within two (2) years after commencement of discharge, unless data have already been reported under the monitoring requirements of the KPDES permit for the discharge.

2. The owner or operator of an existing or new storm water discharge that is storm water associated with construction activity solely as defined in 401 KAR 5:002 or is associated with small construction activity solely as defined in 401 KAR 5:002, is exempt from the requirements of Section 2 of this administrative regulation and subparagraph 1 of this paragraph. The owner or operator shall provide a narrative description of:

a. The location, including a map, and the nature of the construction activity;

b. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

c. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements;

d. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements;

e. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

f. The name of the receiving water.

3. The owner or operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with subparagraph 1 of this paragraph unless the facility:

a. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or

b. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

c. Contributes to a violation of a water quality standard.

4. The owner or operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of these operations.

5. Applicants shall provide such other information the cabinet may reasonably require under Section 2(12) of this administrative regulation to determine whether to issue a permit and may require any facility subject to subparagraph 2 of this paragraph to comply with subparagraph 1 of this paragraph.

(b) Group application for discharges associated with industrial activity. In lieu of individual applications or notice of intent to be covered by a general permit for storm water discharges associated with industrial activity, a group application may be filed by an entity representing a group of applicants, except facilities that have existing individual KPDES permits for storm water, that are part of the same subcategory (see 40 CFR Chapter I, Subchapter N, Part 405 to 471) or, where such grouping is inapplicable, are sufficiently similar as to be appropriate for general permit coverage under 401 KAR 5:055, Section 5. The Part 1 application shall be submitted to the Office of Water Enforcement and Permits, U.S. EPA, 401 M Street, SW., Washington, DC 20460 (EN-336) for approval. Once a Part 1 application is approved, group applicants shall submit Part 2 of the group application to the Office of Water Enforcement and Permits. A group application shall consist of:

1. Part 1. Part 1 of a group application shall:

a. Identify the participants in the group application by name and location. Kentucky facilities participating in the group application are listed in precipitation zone 2 as given in Appendix E of 40 CFR Part 122.

b. Include a narrative description summarizing the industrial activities of participants of the group application and explaining why the participants, as a whole, are sufficiently similar to be a covered by a general permit;

c. Include a list of significant materials stored exposed to precipitation by participants in the group application and materials management practices employed to diminish contact by these materials with precipitation and storm water runoff;

d. Identify ten (10) percent of the dischargers participating in the group application, with a minimum of ten (10) dischargers, and either a minimum of two (2) dischargers from each precipitation zone indicated in Appendix E of 40 CFR Part 122 in which ten (10) or more members of the group are located, or one (1) discharger from each precipitation zone indicated in Appendix E of 40 CFR Part 122 in which nine (9) or fewer members of the group are located, from which quantitative data will be submitted in Part 2. If more than 1,000 facilities are identified in a group application, no more than 100 dischargers shall submit quantitative data in Part 2. Groups of between four (4) and ten (10) dischargers may be formed. However, in groups of between four (4) and ten (10), at least half the facilities shall submit quantitative data, and at least one (1) facility in each precipitation zone in which members of the group are located shall submit data. A description of why the facilities selected to perform sampling and analysis are representative of the group as a whole in terms of the information provided in clauses b and c of this subparagraph, shall accompany this section of the application. Different factors impacting the nature of the storm water discharges, such as processes used and material management, shall be represented, to the extent feasible, in a manner roughly equivalent to their proportion in the group.

2. Part 2. Part 2 of a group application shall contain quantitative data (NPDES Form 2F), as modified by paragraph (a) of this subsection, so that when Part 1 and Part 2 of the group application are taken together, a complete NPDES application (Form 1, Form 2C, and Form 2F) can be evaluated for each discharger identified in subparagraph 1d of this paragraph.

(3) Application requirements for large and medium municipal separate storm sewer discharges. The owner or operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the cabinet under subsection (1)(a)5 of this section, may submit a jurisdiction-wide or system-wide permit application. If more than one (1) public entity owns or operates a municipal separate storm sewer within a geographic area including adjacent or interconnected municipal separate storm sewer systems, the owners or operators may be coapplicants to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under subsection (1)(a)5 of this section shall include;

(a) Part 1. Part 1 of the application shall consist of:

1. General information. The applicants' name, address, telephone number of contact person, ownership status and status as a state or local government entity.

2. Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in paragraph (b)1 of this subsection, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

3. Source identification.

a. A description of the historic use of ordinances, guidance or other controls which limited the discharge of nonstorm water discharges to any POTW serving the same area as the municipal separate storm sewer system.

b. A USGS seven and one-half (7.5) minute topographic map, or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective, extending one (1) mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(i) The location of known municipal storm sewer system outfalls discharging to waters of the Commonwealth;

(ii) A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural and indus-

trial uses) accompanied with estimates of population densities and projected growth for a ten (10) year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(iii) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(iv) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a KPDES permit;

(v) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(vi) The identification of publicly owned parks, recreational areas, and other open lands.

4. Discharge characterization.

a. Monthly mean rain and snow fall estimates or summary of weather bureau data and the monthly average number of storm events.

b. Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

c. A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments and lakes, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving these discharges have been;

(i) Assessed and reported in Section 305(b), 33 USC 1315(b) reports submitted by the Commonwealth, the basis for the assessment, evaluated or monitored, a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(ii) Listed under Section 304(l)(1)(A)(i), Section 304(l)(1)(A)(ii), or Section 304(l)(1)(B) of the CWA, 33 USC 1314(l)(1)(B) that is not expected to meet water quality standards or water quality goals;

(iii) Listed in state nonpoint source assessments required by Section 319(a) of the CWA, 33 USC 1329(a), that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution, or contributing to a violation of water quality standards;

(iv) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under Section 314(a) of the CWA, 33 USC 1324(a). The following shall be included: a description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into these lakes; and a description of methods and procedures to restore the quality of those lakes;

(v) Recognized by the applicant as highly valued or sensitive waters;

(vi) Defined by the U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

(vii) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

d. Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two (2) grab samples shall be collected during a twenty-four (24) hour period with a minimum period of four (4) hours between samples. For all samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of nonstorm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve ana-



lytical methods referenced in 40 CFR Part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls, other outfall points or any other point of access such as manholes randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(i) A grid system consisting of perpendicular north-south and east-west lines spaced one-fourth (1/4) mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

(ii) All cells that contain a segment of the storm sewer system shall be identified; one (1) field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(iii) Field screening points should be located downstream of any sources of suspected illegal or illicit discharge;

(iv) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(v) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(vi) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening, unless access to the separate storm sewer system is impossible; and

(vii) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in clause d(i) through (vi) of this subparagraph, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively, or all major outfalls in the system, if less. In these circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced one-fourth (1/4) mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells. The applicant shall then select major outfalls in as many cells as possible until at least 500 major outfalls for large municipalities or 250 major outfalls for medium municipalities are selected; a field screening analysis shall be undertaken at these major outfalls.

e. Characterization plan. Information and a proposed program to meet the requirements of paragraph (b)3 of this subsection. The description shall include: the location of outfalls or field screening points appropriate for representative data collection under paragraph (b)3a of this subsection, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for sampling shall reflect water quality concerns (see clause c of this subparagraph to the extent practicable).

#### 5. Management programs.

a. A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Controls may include, but are not limited to procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements.

b. A description of the existing program to identify illicit connections to the municipal storm sewer system. The description shall include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

6. Fiscal resources. A description of the financial resources currently available to the municipality to complete Part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs shall be provided.

(b) Part 2. Part 2 of the application shall consist of:

1. Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

a. Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

b. Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

c. Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

d. Control through interagency agreements among coapplicants the contribution of pollutants from one (1) portion of the municipal system to another portion of the municipal system;

e. Require compliance with conditions in ordinances, permits, contracts or orders; and

f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

2. Source identification. List the locations of any major outfalls that discharge to waters of the Commonwealth that were not reported under paragraph (a)3b(i) of this subsection. Provide an inventory, organized by watershed of the name and address, and a description, such as SIC codes, which best reflects the principal products or services provided by each facility which may discharge to the municipal separate storm sewer, storm water associated with industrial activity;

3. Characterization data. When quantitative data for a pollutant are required under paragraph (a)3a(iii) of this subsection, the applicant shall collect a sample of effluent in accordance with Section 2(7) of this administrative regulation and analyze it for the pollutant in accordance with analytical methods referenced in 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but shall provide a description of the method. The applicant shall provide information characterizing the quality and quantity of discharges covered in the permit application, including:

a. Quantitative data from representative outfalls designated by the cabinet. Based on information received in Part 1 of the application, the cabinet shall designate between five (5) and ten (10) outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system. Where there are less than five (5) outfalls covered in the application, the cabinet shall designate all outfalls. A monitoring plan shall be developed as follows:

(i) For each outfall or field screening point designated under this clause, samples shall be collected of storm water discharges from three (3) storm events occurring at least one (1) month apart in accordance with the requirements at Section 2(7) of this administrative regulation. The cabinet may allow exemptions to sampling three (3) storm events when climatic conditions create good cause for these exemptions;

(ii) A narrative description shall be provided of the date and duration of the storm events sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous greater than one-tenth (0.1) inch rainfall storm event;

(iii) For samples collected and described under subclause (i)



and (ii) of this clause, quantitative data shall be provided for the pollutants listed in Section 8(2) and (3) of this administrative regulation, and for the following pollutants:

- Total suspended solids (TSS)
- Total dissolved solids (TDS)
- COD
- BOD
- Oil and grease
- Fecal coliform
- Fecal streptococcus
- pH
- Total Kjeldahl nitrogen
- Nitrate plus nitrite
- Dissolved phosphorus
- Total ammonia plus organic nitrogen
- Total phosphorus

(iv) List additional limited quantitative data required by the cabinet for determining permit conditions. The cabinet may require that quantitative data be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness;

b. Estimates of the annual pollutant load of the cumulative discharges to waters of the Commonwealth from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the Commonwealth from all identified municipal outfalls during a storm event for BOD, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

c. A proposed schedule to provide estimates for each major outfall identified in either subparagraph 2 of this paragraph or paragraph (a)3b(i) of this subsection of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under clause a of this subparagraph and

d. A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled, or the location of in-stream stations, why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

4. Proposed management program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system-wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs shall be considered by the cabinet when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. The programs shall be based on:

a. A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(i) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants, including floatables, in discharges from municipal separate storm sewers;

(ii) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development

and significant redevelopment. The plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in clause d of this subparagraph;

(iii) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(iv) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;

(v) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for the discharges. This program may be coordinated with the program developed under clause c of this subparagraph; and

(vi) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which shall include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

b. A description of a program, including a schedule, to detect and remove, or require the discharger to the municipal separate storm sewer to obtain a separate KPDES permit for, illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(i) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system. This program description shall address all types of illicit discharges, however the following category of nonstorm water discharges or flows shall be addressed where the discharges are identified by the municipality as sources of pollutants to waters of the Commonwealth: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as specified at 40 CFR 35.2005(20)) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. Program descriptions shall address discharges or flows from firefighting only where the discharges or flows are identified as significant sources of pollutants to waters of the Commonwealth;

(ii) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by the field screens;

(iii) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of nonstorm water. The procedures may include sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. The description shall include the location of storm sewers that have been identified for the evaluation;

(iv) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(v) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(vi) A description of educational activities, public information

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activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(vii) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

c. A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC 11023), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(i) Identify priorities and procedures for inspections and establishing and implementing control measures for these discharges;

(ii) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in clause c of this subparagraph, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing KPDES permit for a facility; oil and grease, COD, pH, BOD, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under Section 2(7)(f) and (g) of this administrative regulation.

d. A description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

(i) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

(ii) A description of requirements for nonstructural and structural best management practices;

(iii) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(iv) A description of appropriate educational and training measures for construction site operators.

5. Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

6. Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under subparagraphs 3 and 4 of this paragraph. This analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of the funds.

7. If more than one (1) legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

8. If requirements under paragraph (a)4e of this subsection and subparagraphs 2, 3b, and 4 of this paragraph are not practicable or are not applicable, the cabinet may exclude any operator of a discharge from a municipal separate storm sewer which is designated under subsection (1)(a)5, (2)(d)2 or (2)(g)2 of this section from these requirements. The cabinet shall not exclude the owner or operator of a discharge from a municipal separate storm sewer identified in 40 CFR 122, Appendix F, G, H, or I, from any of the permit application requirements under this subparagraph except where authorized under this section.

(4) Application deadlines. Any owner or operator of a point source required to obtain a permit under subsection (1)(a) of this section that does not have an effective KPDES permit covering its storm water outfalls shall submit an application in accordance with the following deadlines:

(a) Individual applications.

1. Except as provided in subparagraph 2 of this paragraph, for any storm water discharge associated with industrial activity defined

in 401 KAR 5:002 [5:004] that is not part of a group application as described in subsection (2)(b) of this section or which is not authorized by a storm water general permit, a permit application made pursuant to subsection (2) of this section shall be submitted to the cabinet by October 1, 1992;

2. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, the permit application shall be submitted by March 10, 2003 [permit applications are not required].

(b) For any group application submitted in accordance with subsection (2)(b) of this section:

1. Part 1.

a. Except as provided in clause b of this subparagraph, Part 1 of the application shall be submitted to the U.S. EPA Director, Office of Water Enforcement and Permits by September 30, 1991;

b. Any municipality with a population of less than 250,000 shall be required to submit a Part 1 application before May 18, 1992.

c. For any storm water discharge associated with industrial activities from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, permit applications are not required.

2. Based on information in the Part 1 application, the Director will approve or deny the members in the group application within sixty (60) days after receiving Part 1 of the group application.

3. Part 2.

a. Except as provided in clause b of this subparagraph, Part 2 of the application shall be submitted to the Director, Office of Water Enforcement and Permits by October 1, 1992;

b. Any municipality with a population of less than 250,000 shall not be required to submit a Part 1 application before May 17, 1993.

c. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, permit applications are not required.

4. Rejected facilities.

a. Except as provided in clause b of this subparagraph, facilities that are rejected as members of a group shall submit an individual application or obtain coverage under an applicable general permit no later than twelve (12) months after the date of receipt of the notice of rejection or October 1, 1992, whichever comes first.

b. Facilities that are owned or operated by a municipality and that are rejected as members of Part I group application shall submit an individual application no later than 180 days after the date of the receipt of the notice of registration or October 1, 1992, whichever is later.

5. A facility defined as a storm water associated with industrial activity in 401 KAR 5:002 [5:004] may add on to a group application submitted in accordance with subparagraph 1 of this paragraph at the discretion of the U.S. EPA Office of Water Enforcement and Permits, and only upon a showing of good cause by the facility and the group applicant; the request for the addition of the facility shall be made no later than February 18, 1992. The addition of the facility shall not cause the percentage of the facilities that are required to submit quantitative data to be less than ten (10) percent, unless there are over 100 facilities in the group that are submitting quantitative data. Approval to become part of group application shall be obtained from the group or the trade association representing the individual facilities.

(c) For any discharge from a large municipal separate storm sewer system:

1. Part 1 of the application shall be submitted to the cabinet by November 18, 1991;

2. Based on information received in the Part 1 application the cabinet shall approve or deny a sampling plan under subsection (3)(a)4e of this section within ninety (90) days after receiving the Part 1 application;

3. Part 2 of the application shall be submitted to the cabinet by November 16, 1992.

(d) For any discharge from a medium municipal separate storm sewer system:

1. Part 1 of the application shall be submitted to the cabinet by May 18, 1992.

2. Based on information received in the Part 1 application the

cabinet will approve or deny a sampling plan within ninety (90) days after receiving the Part 1 application.

3. Part 2 of the application shall be submitted to the cabinet by May 17, 1993.

(e) For any discharge from a regulated small MS4, the permit application made under subsection (8) of this section shall be submitted to the cabinet by:

1. March 10, 2003 if designated under subsection (7)(a)1 of this section unless the MS4 serves a jurisdiction with a population under 10,000 and the cabinet has established a phasing schedule under 40 CFR 123.35(d)(3) (see subsection (8)(c)1 of this section); or

2. Within 180 days of notice, unless the cabinet grants a later date, if designated under subsection (7)(a)2 of this section, see subsection (8)(c)2 of this section.

(f) For any storm water discharge associated with small construction activity identified in 401 KAR 5:002 Section 1, see subsection (4) of this section. Discharges from these sources require permit authorization by March 10, 2003, unless designated for coverage before then.

(g) A permit application shall be submitted to the cabinet within 180 ~~(sixty (60))~~ days of notice, unless permission for a later date is granted by the cabinet for:

1. A storm water discharge which either the cabinet or the EPA Regional Administrator determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Commonwealth (see subsection (1)(a)5 of this section and 401 KAR 5:002, Section 1(290)(b)); or

2. A storm water discharge subject to subsection (2)(a)5 of this section.

(h) ~~(4)~~ Facilities with existing KPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted in accordance with the requirements of Section 2 of this administrative regulation and subsection (2) of this section 180 days before the expiration of the permits.

(5) Petitions.

(a) Any owner or operator of a municipal separate storm sewer system may petition the cabinet to require a separate KPDES permit for any discharge into the municipal separate storm sewer system.

(b) Any person may petition the cabinet to require a KPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Commonwealth.

(c) The owner or operator of a municipal separate storm sewer system may petition the cabinet to reduce the census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 401 KAR 5:002, Section 1(55), ~~(40 CFR 35.2005(b)(14))~~ that is treated in a publicly owned treatment works. In municipalities or regional authorities in which combined sewers are operated, the census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the KPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) Any person may petition the cabinet for the designation of a large, medium or small ~~(or medium)~~ municipal separate storm sewer system as defined in 401 KAR 5:002 ~~(5:004)~~.

(e) The cabinet shall make a final determination on any petition received under this section within ninety (90) days after receiving the petition with the exception of petitions to designate a small MS4 in which case the cabinet shall make a final determination on the petition within 180 days after its receipt.

(6) Conditional exclusion for "no exposure" of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in paragraphs (a) through (d) of this subsection. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities

include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(a) Qualification. To qualify for this exclusion, the operator of the discharge shall:

1. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff;

2. Complete and sign, according to Section 9 of this administrative regulation, a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (b) of this subsection;

3. Submit the signed certification to the cabinet once every five years;

4. Allow the cabinet to inspect the facility to determine compliance with the "no exposure" conditions;

5. Allow the cabinet to make any "no exposure" inspection reports available to the public upon request; and

6. For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(b) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

1. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak. "Sealed" means banded or otherwise secured and without operational taps or valves;

2. Adequately maintained vehicles used in material handling; and

3. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(c) Limitations.

1. Storm water discharges from construction activities defined in 401 KAR 5:002, Section 1, are not eligible for this conditional exclusion.

2. This conditional exclusion from the requirement for a KPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements should be adjusted accordingly.

3. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

4. Notwithstanding the provisions of this paragraph, the cabinet retains the authority to require permit authorization and deny this exclusion upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(d) Certification. The no exposure certification shall require the submission of the following information, at a minimum, to aid the cabinet in determining if the facility qualifies for the no exposure exclusion:

1. The legal name, address and phone number of the discharger, see Section 1(3) of this administrative regulation;

2. The facility name and address, the county name and the latitude and longitude where the facility is located;

3. The certification shall indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

a. Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

b. Materials or residuals on the ground or in storm water inlets from spills/leaks;

c. Materials or products from past industrial activity;  
d. Material handling equipment, except adequately maintained vehicles;

e. Materials or products during loading/unloading or transporting activities;

f. Materials or products stored outdoors, except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants;

g. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

h. Materials or products handled/stored on roads or railways owned or maintained by the discharger;

i. Waste material, except waste in covered, nonleaking containers, e.g., dumpsters;

j. Application or disposal of process wastewater, unless otherwise permitted; and

k. Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

4. All "no exposure" certifications shall include the following certification statement, and be signed in accordance with the signatory requirements of Section 9 of this administrative regulation: "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from KPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document, except as allowed under paragraph (b) of this subsection. I understand that I am obligated to submit a no exposure certification form once every five (5) years to the cabinet and, if requested, to the operator of the local MS4 into which this facility discharge, where applicable. I understand that I shall allow the cabinet, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I shall obtain coverage under an KPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### (7) Regulated small MS4.

(a) Unless qualifying for a waiver under paragraph (c) of this subsection, an operator of a small MS4 is regulated, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation; and:

1. The small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated or

2. Designated by the cabinet, including where the designation is pursuant to 40 CFR 123.35(b)(3) and (b)(4), or is based upon a petition under subsection (5) of this section.

(b) Subject of a petition to the cabinet to require an KPDES permit for discharge of storm water. If the cabinet determines a permit is needed, then subsections (7) through (10) of this section apply.

(c) The cabinet may waive the requirements otherwise applicable in accordance with paragraph (d) or (e) of this subsection. A waiver under this section may subsequently require coverage under a KPDES permit in accordance with subsection (8)(a) of this section, if circumstances change, see also 40 CFR 123.35(b).

(d) The cabinet may waive permit coverage if the MS4 serves a population of less than 1,000 within the urbanized area and meets the following criteria:

1. The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the KPDES storm water program, see 40 CFR 123.35(b)(4); and

2. The system discharges any pollutant(s) that have been identified as a cause of impairment of any water body receiving the discharge, storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern.

(e) The cabinet may waive permit coverage if the MS4 serves a population under 10,000 and meets the following criteria:

1. The cabinet has evaluated all waters of the Commonwealth, including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4;

2. For all such waters, the cabinet has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern;

3. For the purpose of this paragraph, the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment such as total suspended solids, turbidity or siltation, pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4; and

4. The cabinet has determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

(8) Application requirements for small MS4.

(a) Operators of a regulated small MS4 under subsection (7) shall seek coverage under a KPDES permit issued by cabinet.

(b) Authorization to discharge shall be under a general or individual KPDES permit, as follows:

1. For a general permit issued by the cabinet applicable to the discharge, the applicant shall submit a Notice of Intent (NOI) that includes the information on best management practices and measurable goals required by subsection (9)(d)1 of this section. An individual NOI, or joint NOI with other municipalities or governmental entities, shall be submitted. Shared responsibilities for meeting the minimum measures with other municipalities or governmental entities, shall be indicated on the NOI describing which minimum measures shall be implemented by each within the area served by the MS4. Coverage as a copermittee under a general permit by means of a joint Notice of Intent, requires each MS4 to be subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in each respective jurisdiction except as set forth in subsection (10)(b) of this section.

2.a. Authorization to discharge under an individual permit to implement a program under subsection (9) of this section, requires submittal of an application to the cabinet that includes the information required under Section 1(7) of this administrative regulation and subsection (9)(d) of this section, an estimate of square mileage served by the small MS4, and any additional information that the cabinet requests. A storm sewer map that satisfies the requirement of subsection (9)(b)3 of this section will satisfy the map requirement in Section 1(7)(f) of this administrative regulation.

b. Authorization to discharge under an individual permit to implement a program that is different from the program under subsection (9) of this section, requires compliance with the permit application requirements of subsection (3) of this section. Both parts of the application requirements in subsection (3)(a) and (b) of this section shall be submitted by March 10, 2003. Information required by subsection (3)(a)2 and (b)1 of this section regarding legal authority is not required, unless the small MS4 intends for the permit writer to take such information into account when developing the other permit conditions.

c. If allowed by the cabinet, multiple entities may jointly apply under either paragraph (b)2a or b of this subsection to be copermittees under an individual permit. Coverage as a copermittee under an individual permit by means of a joint notice of intent requires each MS4 to be subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in each respective jurisdiction except as set forth in subsection (10)(b) of this section.

3. Where a small MS4 is in the same urbanized area as a me-



dium or large MS4 with a KPDES storm water permit and that other MS4 is willing to have the small MS4 participate in its storm water program, the entities may jointly seek a modification of the other MS4 permit to include the small MS4 as a limited copermitee. As a limited copermitee, the small MS4 will be responsible for compliance with the permit's conditions applicable to its jurisdiction. Choice of this option requires compliance with the permit application requirements of subsection (1) of this section, rather than the requirements of subsection (9) of this section. There is no need to comply with the specific application requirements of subsection (3)(a)3 and 4 and (b)3 of this section (discharge characterization). The small MS4 may satisfy the requirements in subsection (3)(a)5 and (b)4 of this section (identification of a management program) by referring to the other MS4's storm water management program.

(c) Operation of a regulated small MS4:

1. Designated under subsection (7)(a)1 of this section, requires coverage under a KPDES permit, or apply for a modification of an existing KPDES permit under paragraph (b)3 of this subsection by March 10, 2003, unless the MS4 serves a jurisdiction with a population under 10,000 and the cabinet has established a phasing schedule under 40 CFR 123.35(d)(3).

2. Designated under subsection (7)(a)2 of this section, requires coverage under an KPDES permit, or apply for a modification of an existing KPDES permit under paragraph (b)3 of this subsection, within 180 days of notice, unless the cabinet grants a later date.

(9) Permit requirements for small MS4.

(a) The KPDES MS4 permit shall require at a minimum the MS4 to develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The storm water management program shall include the minimum control measures described in paragraph (b) of this subsection unless the MS4 applies for a permit under subsection (3) of this section. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements, including reductions of pollutants to the maximum extent practicable and to protect water quality. Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to subsection (8) of this section constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." The cabinet shall specify a time period of up to five (5) years from the date of permit issuance for the MS4 to develop and implement the program.

(b) Minimum control measures:

1. Public education and outreach on storm water impacts. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

2. Public involvement/participation. At a minimum, comply with state, and local public notice requirements when implementing a public involvement/ participation program.

3. Illicit discharge detection and elimination. Develop, implement and enforce a program to detect and eliminate illicit discharges as defined in 401 KAR 5:002, Section 1, into the small MS4 to include:

a. A storm sewer system map, showing the location of all outfalls and the names and location of all waters of the Commonwealth that receive discharges from those outfalls;

b. To the extent allowable under state, or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

c. Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the system; and

d. Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

e. Address the following categories of nonstorm water dis-

charges or flows, i.e., illicit discharges only if identified as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration as defined at 40 CFR 35.2005(b)(20), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water discharges or flows from fire fighting activities are excluded from the effective prohibition against nonstorm water and need only be addressed where they are identified as significant sources of pollutants to waters of the Commonwealth.

4. Construction site storm water runoff control.

a. Develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one (1) acre. Reduction of storm water discharges from construction activity disturbing less than one (1) acre shall be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one (1) acre or more. If the cabinet waives requirements for storm water discharges associated with small construction activity, the small MS4 is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

b. The program shall include the development and implementation of, at a minimum:

(i) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state or local law;

(ii) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(iii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(iv) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(v) Procedures for receipt and consideration of information submitted by the public; and

(vi) Procedures for site inspection and enforcement of control measures.

5. Postconstruction storm water management in new development and redevelopment

a. Develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one (1) acre, including projects less than one (1) acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program shall ensure that controls are in place that would prevent or minimize water quality impacts;

b. Develop and implement strategies which include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for the community;

c. Use an ordinance or other regulatory mechanism to address postconstruction runoff from new development and redevelopment projects to the extent allowable under state or local law; and

d. Ensure adequate long-term operation and maintenance of BMPs.

6. Pollution prevention/good housekeeping for municipal operations.

e. The small MS4 shall develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, or other organizations, the program shall include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(c) If an existing qualifying local program requires the implementation of one (1) or more of the minimum control measures of

paragraph (b) of this subsection, the cabinet may include conditions in the KPDES permit that direct the small MS4 to follow that qualifying program's requirements rather than the requirements of paragraph (b) of this subsection. A qualifying local program is a local or state municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of this subsection.

(d)1. In the permit application, either a notice of intent for coverage under a general permit or an individual permit application, the small MS4 shall identify and submit to the cabinet the following information:

a. The BMPs that the small MS4 or another entity will implement for each of the storm water minimum control measures at paragraph (b)1 through 6 of this subsection;

b. The measurable goals for each of the BMPs including, as appropriate, the months and years in which the responsible party will undertake required actions, including interim milestones and the frequency of the action; and

c. The person or persons responsible for implementing or coordinating the storm water management program.

2. If covered under a general permit, the small MS4 is not required to meet any measurable goal(s) identified in the notice of intent in order to demonstrate compliance with the minimum control measures in paragraph (b)3 through 6 of this subsection unless, prior to submitting the NOI, EPA or the state has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, the small MS4 shall comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

(e) The small MS4 shall comply with any more stringent effluent limitations in the permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The cabinet may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

(f) The small MS4 shall comply with other applicable KPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of 401 KAR 5:065 and 5:070, as appropriate.

(g) Evaluation and assessment.

1. Evaluation. The small MS4 shall evaluate program compliance, the appropriateness of identified best management practices, and progress towards achieving identified measurable goals. The cabinet may determine monitoring requirements in accordance with state monitoring plans appropriate to a watershed.

2. Recordkeeping. The small MS4 shall keep records required by the KPDES permit for at least three (3) years. Records shall be submitted to the cabinet only when specifically asked to do so. Records, including a description of the storm water management program, shall be made available to the public at reasonable times during regular business hours, see 400 KAR 1:060 for confidentiality provision.

3. Reporting. Unless relying on another entity to satisfy the KPDES permit obligations under subsection (10)(a) of this section, the small MS4 shall submit annual reports to the cabinet for the first permit term. For subsequent permit terms, reports shall be submitted in year two (2) and four (4) unless the cabinet requires more frequent reports. The report shall include:

a. The status of compliance with permit conditions, an assessment of the appropriateness of identified best management practices and progress towards achieving identified measurable goals for each of the minimum control measures;

b. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

c. A summary of the storm water activities planned during the next reporting cycle;

d. A change in any identified best management practices or measurable goals for any of the minimum control measures; and

e. Notice of reliance on another governmental entity to satisfy some of the permit obligations, if applicable.

(10) Shared responsibilities for minimum control measures.

(a) The small MS4 may rely on another entity to satisfy the

KPDES permit obligations to implement a minimum control measure if:

1. The other entity, in fact, implements the control measure;  
2. The particular control measure, or component thereof, is at least as stringent as the corresponding KPDES permit requirement; and

3. The other entity agrees to implement the control measure on the small MS4 behalf. In the reports submitted under subsection (9)(g)3 of this section, the small MS4 shall also specify reliance on another entity to satisfy some of the permit obligations. If relying on another governmental entity regulated under this section to satisfy all of the permit obligations, including the obligation to file periodic reports required by subsection (9)(g)3 of this section, that fact shall be noted in the NOI. However, in this case, the small MS4 is not required to file the periodic reports. The small MS4 remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure (or component thereof).

(b) In some cases, the cabinet may recognize, either in the individual KPDES permit or in an KPDES general permit, that another governmental entity is responsible under an KPDES permit for implementing one (1) or more of the minimum control measures for the small MS4 or that the cabinet itself is responsible. Where the cabinet does so, the small MS4 is not required to include such minimum control measure(s) in the storm water management program. For example, if a state is subject to an KPDES permit that requires it to administer a program to control construction site runoff at the state level and that program satisfies all of the requirements of subsection (9)(b)4 of this section, the small MS4 could avoid responsibility for the construction measure, but would be responsible for the remaining minimum control measures. The permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

Section 13. Silvicultural Activities. Permit requirement. Silvicultural point sources, as defined in 401 KAR 5:002 ~~[5:004]~~, are point sources subject to the KPDES permit program.

Section 14. 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 published by the Office of the Federal Register, National Archives and Government Services, General Services Administration, and are 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. Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(1) 40 CFR 35.2005(b)(20), "Grants for Construction of Treatment Works, Definitions, Infiltration", revised as of July 1, 2001;

(2) 40 CFR 110.6, "Discharge of Oil, Notice Requirements", revised as of July 1, 2001;

(3) 40 CFR 117.21, "Notice of Discharge of Reportable Quantity", revised as of July 1, 2001;

(4) 40 CFR 122, "National Pollutant Discharge Elimination System", revised as of July 1, 2001;

(5) 40 CFR 123.35, "Regulation of Small Municipal Separate Storm Sewer Systems", revised as of July 1, 2001;

(6) 40 CFR Part 136, "Guidelines Establishing Test Procedures for the Analyses of Pollutant", revised as of July 1, 2001;

(7) 40 CFR Part 261, "Identification and Listing of Hazardous Waste", revised as of July 1, 2001;

(8) 40 CFR 262.34, "Hazardous Waste, Pretransport Requirements, Accumulation Time", revised as of July 1, 2001;

(9) 40 CFR 302.6, "Designation, Reportable Quantities and Notification, Notification Requirements", revised as of July 1, 2001;

(10) 40 CFR Part 355, Appendix A, "The List of Extremely Hazardous Substances", revised as of July 1, 2001; and

(11) 40 CFR Chapter I, Subchapter N, Part 401 et seq., "Federal Effluent Limitations and Standards and New Source Performance Standards", revised as of July 1, 2001.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:



## VOLUME 28, NUMBER 12 – JUNE 1, 2002

- (a) KPDES Form 1, DEP 7032, revised February 2002;
- (b) KPDES Form A, DEP 7032A, revised February 2002;
- (c) KPDES Form B, DEP 7032B, revised February 2002;
- (d) KPDES Form C, DEP 7032C, revised February 2002;
- (e) KPDES Short Form C, DEP 7032SC, revised February 2002;

and

- (f) KPDES Form F, DEP 7032F, revised February 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, [KPDES Application Forms. The following permit applications forms are hereby incorporated by reference. Application forms may be obtained from or inspected] at the KPDES Branch at the Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays.

- (1) KPDES Form 1, revised July 1994;
- (2) KPDES Form A, revised July 1994;
- (3) KPDES Form B, revised July 1994;
- (4) KPDES Form C, revised July 1994;
- (5) KPDES Short Form C, revised July 1994; and
- (6) KPDES Form F, revised July 1994.]

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: May 6, 2002

FILED WITH LRC: May 9, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for June 25, 2002, 9:30 a.m. in the Franklin County Extension Office, 101 Lakeview Court, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by June 18, 2002, 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 provided 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 close of business on June 18, 2002 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: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey W. Pratt, Director

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes application requirements for KPDES permits.
  - (b) The necessity of this administrative regulation: This administrative regulation was needed because all NPDES delegated states must have compatible state regulations.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets out the details of applying for KPDES permits. The impact of the KPDES permit program helps to implement the pollution prevention goals of KRS Chapter 224.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies KPDES permit applications requirements. KPDES permits control the introduction of pollutants into waters of the Commonwealth. This is consistent with the goals of KRS Chapter 224.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this administrative regula-

tion: This amendment will correct and update the regulation to make it compatible with the corresponding federal regulation.

(b) The necessity of the amendment to this administrative regulation: If this administrative regulation is not amended as proposed the state regulation will continue to be incompatible with the corresponding federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation still provides for water pollution control as authorized under KRS Chapter 224.

(d) How the amendment will assist in the effective administration of the statutes: The corrected and updated regulation will be compatible with the corresponding federal regulations which will aid in carrying out the goals of KRS Chapter 224.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to over 10,000 permitted entities which may be individuals, businesses or state/local governmental organizations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact of this administrative regulation amendment will be nonexistent because the new requirements went into effect when the corresponding federal regulations were adopted.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The first year, the cabinet will incur no additional costs.

(b) On a continuing basis: There will be no additional costs attributable to this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no change in the funding sources due to this amended administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation amendment does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. To the extent that the corresponding federal regulations provided for tiering, these amendments are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to obtain delegation of the federal NPDES permit program.
2. State compliance standards. This regulation amendment establishes state standards that are the same as the corresponding federal standards.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, this regulation amendment does not establish any requirements stricter than that established by the corresponding federal regulations.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standards are being proposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation

amendment will affect 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. This administrative regulation amendment relates to those entities that operate facilities that discharge into waters of the Commonwealth.

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. None; since this regulation amendment merely provides for compatibility with corresponding federal regulations which have already gone into effect.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

**401 KAR 5:065. KPDES permit conditions.**

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, ~~224.10-100, 224.16-050,~~ 224.70-100, 224.70-120, ~~224.70-140,~~ 224.99-010, 40 CFR 129, 136, Chapter I, Subchapter N, 401 et seq., 503, 33 USC 1251 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, 40 CFR 129, 136, Chapter I, Subchapter N, 401 et seq., 503, 33 USC 1251 et seq., 1342

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 further empowers the cabinet to issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act, [43 USC Section 1251 et seq.] subject to the conditions imposed in 33 USC Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act. This administrative regulation sets forth the conditions applicable to all KPDES permits and the procedures for establishing and calculating permit conditions.

Section 1. Conditions Applicable to all KPDES Permits. All conditions applicable to KPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these administrative regulations shall be given in the permit. In addition to conditions required in all KPDES permits, the cabinet shall establish conditions as required on a case-by-case basis under Section 2 of this administrative regulation and 401 KAR 5:070.

(1) Duty to comply.

(a) General requirement. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224, among which are the following remedies: enforcement action, permit revocation, revocation and reissuance, or modification; or denial of a permit renewal application.

(b) Specific duties.

1. The permittee shall comply with effluent standards or prohibitions established under 40 CFR Part 129 as of July 1, 2001, as adopted without change, ~~1991, as published by the Office of the Federal Register, National Archives and Register Services, General Services Administration and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, for toxic pollutants~~ within the time provided in the federal regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

2. Any person who violates a permit condition as set forth in the KPDES administrative regulations is subject to penalties under KRS 224.99-010(1) and (4).

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit as required in 401 KAR 5:060, Section 1.

(3) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(6) Permit actions. The permit may be modified, revoked and reissued, or revoked for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property rights. This permit does not convey any property rights of any kind, or any exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the cabinet, within a reasonable time, any information which the cabinet may request to determine whether cause exists for modifying, revoking and reissuing, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the cabinet, upon request, copies of records required to be kept by this permit.

(9) Inspection and entry. The permittee shall allow the cabinet, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records pertinent to the KPDES program are or may be kept;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring KPDES program compliance or as otherwise authorized by KRS Chapter 224, any substances or parameters at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time.

(c) Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;

2. The individuals who performed the sampling or measurements;

3. The dates analyses were performed;

4. The individuals who performed the analyses;

5. The analytical techniques or methods used; and

6. The results of the analyses.

(d) Monitoring shall be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.

(e) Any person who falsifies, tampers with, or knowingly renders

inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be subject to penalties under KRS 224.99-010(4).

(11) Signatory requirement. All applications, reports, or information submitted to the cabinet shall be signed and certified as indicated in 401 KAR 5:060, Section 9. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.99-010(4).

(12) Reporting requirements.

(a) Planned changes. The permittee shall give notice to the cabinet as soon as possible of any planned physical alteration or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in 401 KAR 5:080, Section 5; or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject either to effluent limitations in the permit, or to notification requirements under 401 KAR 5:080, Section 5.

(b) Anticipated noncompliance. The permittee shall give advance notice to the cabinet of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Transfers. The permit is not transferable to any person except after notice to the cabinet. The cabinet may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS Chapter 224.

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit. Monitoring results shall be reported as follows:

1. Monitoring results shall be reported on a Discharge Monitoring Report (DMR).

2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the cabinet in the permit.

(e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

(f) Twenty-four (24) hour reporting. The permittee shall follow the provisions of 401 KAR 5:015 and shall orally report any noncompliance which may endanger health or the environment, within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. This report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The cabinet may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours. The following shall be included as events which shall be reported within twenty-four (24) hours:

1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in subsection (13) of this section.

2. Any upset which exceeds any effluent limitation in the permit.

3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the cabinet in the permit to be reported within twenty-four (24) hours, as indicated in Section 2(7) of this administrative regulation.

(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this subsection, when monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this subsection.

(h) Other information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in a permit application or in any report to the cabinet, it shall promptly submit these facts or information.

(13) Occurrence of a bypass.

(a) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. This type of bypass is not subject to the provisions of paragraphs (b) and (c) of this subsection.

(b) Notice.

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 1.

2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subsection (12)(f) of this section, twenty-four (24) hour notice. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 4.

(c) Prohibition of a bypass.

1. Bypassing is prohibited, and the cabinet may take enforcement action against a permittee for bypass, unless:

a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The permittee submitted notices as required under paragraph (b) of this subsection.

2. The cabinet may approve an anticipated bypass, after considering its adverse effects, if the cabinet determines that it will meet the three (3) conditions listed in subparagraph 1a, b, and c of this paragraph.

(14) Occurrence of an upset.

(a) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of paragraph (b) of this subsection are met.

(b) Conditions necessary for a demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the causes of the upset;

2. The permitted facility was at the time being properly operated;

3. The permittee submitted notice of the upset as required in subsection (12)(f) of this section; and

4. The permittee complied with any remedial measures required under subsection (4) of this section.

(c) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

(15) Additional conditions applicable to specified categories of KPDES permits. The following conditions, in addition to others set forth in this administrative regulation, apply to all KPDES permits within the categories specified below:

(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under subsections (12), (13), and (14) of this section, any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the cabinet as soon as it knows or has reason to know:

1. That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

- a. 100 micrograms per liter (100 µg/l);
- b. 200 micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 2(7);

d. The level established by the cabinet in accordance with Section 2(6) of this administrative regulation.

2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

a. 500 micrograms per liter (500 µg/l);

b. One (1) milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 2(7); or

d. The level established by the cabinet in accordance with Section 2(6) of this administrative regulation.

(b) POTWs.

1. POTWs shall provide adequate notice to the cabinet of the following:

a. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the KPDES administrative regulations if it were directly discharging those pollutants; or

b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

2. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTWs and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

Section 2. Establishing Permit Conditions. For the purpose of this section, permit conditions include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in 401 KAR 5:070, Section 6. New or reissued permits, and to the extent allowed under 401 KAR 5:070, Section 6 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under Section 1 of this administrative regulation each KPDES permit shall include conditions meeting the following requirements as applicable.

(1) Technology-based effluent limitations and standards; new source performance standards; and pretreatment requirements and standards, as required by 40 CFR Chapter I, Subchapter N (Part 401 et seq.), adopted without change in Section 4 of this administrative regulation, or case-by-case effluent limitations and standards and pretreatment requirements or based on a combination of those standards in accordance with 401 KAR 5:080, Section 1(2) shall be included, as applicable. For new sources or new discharges, these technology-based limitations and standards are subject to the provisions of 401 KAR 5:080, Section 5(2)(a).

(2) Other effluent limitations and standards of KRS Chapter 224 shall be included as applicable. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in the effluent standard or prohibition, is promulgated by EPA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the cabinet shall institute proceedings under these administrative regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(3) Reopener clause. For any discharger within a primary industry category, as listed in Section 4(2) of this administrative regulation requirements under the KPDES administrative regulations shall be incorporated as applicable, as follows:

(a) On or before June 30, 1981.

1. If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that if an applicable standard or limitation is promulgated by EPA and that effluent

standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

2. If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations.

(b) After June 30, 1981, any permit issued shall include effluent limitations and a compliance schedule to meet the applicable requirements indicated in Section 1(1)(b) of this administrative regulation, whether or not applicable effluent limitations guidelines have been promulgated or approved by EPA. These permits need not incorporate the reopener clause required by paragraph (a) of this subsection.

(c) The cabinet shall promptly modify or revoke and reissue any permit containing the clause required under paragraph (a) of this subsection to incorporate an applicable EPA effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitations guidelines or standards shall be included, when necessary to:

(a) Achieve water quality standards established under KRS Chapter 224 and administrative regulations promulgated pursuant thereto, including any narrative criteria contained in 401 KAR 5:031.

1. Limitations shall control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the cabinet determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria for water quality.

2. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a water quality standard, the cabinet shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing, when evaluating whole effluent toxicity, and where appropriate, the dilution of the effluent in the receiving water.

3. When the cabinet determines, using the procedures in subparagraph 2 of this paragraph, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a numeric criteria within a water quality standard for an individual pollutant, the permit shall contain effluent limits for that pollutant.

4. When the cabinet determines, using the procedures in subparagraph 2 of this paragraph, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit shall contain effluent limits for whole effluent toxicity.

5. Except as provided in this subparagraph, when the cabinet determines, using the procedures in subparagraph 2 of this paragraph, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable water quality standard, the permit shall contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the cabinet demonstrates in the fact sheet or statement of basis of the KPDES permit, using the procedures in subparagraph 2 of this paragraph, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative water quality standards.

6. If 401 KAR 5:031 does not specify a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable water quality standard, the cabinet shall establish effluent limits using one (1) or more of the following options:

a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the cabinet demonstrates will attain and maintain applicable narrative water quality criteria and will

fully protect the designated use. Such a criterion may be derived using administrative regulation interpreting the narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, September 1993, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

b. Establish effluent limits on a case-by-case basis, using water quality criteria listed in 401 KAR 5:031, supplemented where necessary by other relevant information; or

c. Establish effluent limitations on an indicator parameter for the pollutant of concern, if:

(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(ii) The fact sheet required by 401 KAR 5:075 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(iv) The permit contains a reopener clause allowing the cabinet to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

7. When developing water quality-based effluent limits under this paragraph the cabinet shall ensure that:

a. The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

b. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the cabinet;

(b) Attain or maintain a specified water quality through water quality related effluent limits established under Section 302 of the Clean Water Act, or CWA, [43 USC Section 1312(i)];

(c) Conform to applicable water quality requirements when the discharge affects a state other than Kentucky;

(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or administrative regulations in accordance with Section 301(b)(1)(c) of CWA, [43 USC Section 1311(b)(1)(c)];

(e) Ensure consistency with the requirements of any Kentucky Water Quality Management Plan approved by EPA.

(f) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 401 KAR 5:080, Section 3.

(5) Toxic pollutants. Limitations established under subsections (1), (2) or (4) of this section, to control pollutants meeting the criteria listed in paragraph (a) of this subsection shall be included in the permit, if applicable. Limitations shall be established in accordance with paragraph (b) of this subsection. An explanation of the development of these limitations shall be included in the fact sheet under 401 KAR 5:075, Section 4.

(a) Limitations shall control all toxic pollutants which:

1. The cabinet determines, based on information reported in a permit application under 401 KAR 5:060, Section 2(7), or in a notification under Section 1(15)(a) of this administrative regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c); or

2. The discharger does or may use or manufacture as an intermediate or final product or by-product.

(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection shall be satisfied by:

1. Limitations on those pollutants; or

2. Limitations on other pollutants which, in the judgment of the cabinet, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by 401 KAR 5:080, Section

1(2)(c).

(6) Notification level. A "notification level" which exceeds the notification level of Section 1(15)(a)1a, b, or c of this administrative regulation, upon a petition from the permittee or on the cabinet's initiative shall be incorporated as a permit condition, if applicable. This new notification level shall not exceed the level which can be achieved by the technology-based treatment requirements appropriated to the permittee under 401 KAR 5:080, Section 1(2)(c).

(7) Twenty-four (24) hour reporting. Pollutants for which the permittee shall report violations of maximum daily discharge limitations under Section 1(12)(f) of this administrative regulation (twenty-four (24) hour reporting) shall be listed as such in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(8) Monitoring requirements. The permit shall incorporate, as applicable in addition to Section 1(12) of this administrative regulation, the following monitoring requirements:

(a) To assure compliance with permit limitations, requirements to monitor:

1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

2. The volume of effluent discharged from each outfall; and

3. Other measurements as appropriate; including pollutants in internal waste streams under Section 3(8) of this administrative regulation; frequency, rate of discharge, etc., for noncontinuous discharges under Section 3(5) of this administrative regulation; and pollutants subject to notification requirements under Section 1(15)(a) of this administrative regulation.

(b) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.

(c) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but not less than once a year with the following exceptions:

1. Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but not less than once a year.

2. Requirements to report monitoring results for storm water discharges associated with industrial activity, other than those addressed in subparagraph 1 of this paragraph shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge shall require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three (3) years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. The report and certification be signed in accordance with 401 KAR 5:060, Section 9; and

d. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three (3) years by a professional engineer that the facility is in compliance with the permit, or alternative requirements.

3. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under Section 1(12)(g) of this administrative regulation at least annually.

(d) Monitoring waivers for certain guideline-listed pollutants.

1. The cabinet may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an KPDES permit to forego sampling of a pollutant found at 40 CFR Chapter I, Subchapter N if the discharger has demonstrated through



sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

2. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

3. Any request for this waiver shall be submitted when applying for a reissued permit or modification of a reissued permit. The request shall demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

4. Any grant of the monitoring waiver shall be included in the permit as an express permit condition and the reasons supporting the grant shall be documented in the permit's fact sheet or statement of basis.

5. This provision shall not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

(9) Pretreatment program for POTWs. If applicable to the facility the permit shall incorporate as a permit condition requirements for POTWs to:

(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the KPDES administrative regulations.

(b) Submit a local program when required by and in accordance with 401 KAR 5:057, to assure compliance with pretreatment standards to the extent applicable in the KPDES administrative regulations. The local program shall be incorporated into the permit as described in 401 KAR 5:057. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.

(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants when:

(a) Applicable under KRS Chapter 224 and the KPDES administrative regulations for the control of toxic pollutants and hazardous substances from ancillary activities;

(b) Numeric effluent limitations are infeasible; or

(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of KRS Chapter 224.

(d) Authorized under section 402(p) of the CWA, 33 USC 1342(p) for the control of storm water discharges.

(11) Qualifying state or local programs.

(a) For storm water discharges associated with small construction activity, as identified in 401 KAR 5:002, Section 1, the KPDES permit may include permit conditions that incorporate qualifying state or local erosion and sediment control program requirements by reference. Where a qualifying state or local program does not include one (1) or more of the elements in this paragraph, then the KPDES shall include those elements as conditions in the permit. A qualifying state or local erosion and sediment control program is one that includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; and

3. Requirements for construction site operators to develop and implement a storm water pollution prevention plan; a storm water pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved state or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges.

(b) For storm water discharges from construction activity, as identified in 401 KAR 5:002, Section 1, KPDES permit may include permit conditions that incorporate qualifying state or local erosion and sediment control program requirements by reference. A qualifying state or local erosion and sediment control program is one that includes the elements listed in paragraph (a) of this subsection and

any additional requirements necessary to achieve "best available technology" and "best conventional technology" based on the best professional judgement of the permit writer.

(12) [(44)] Reissued permits.

(a) The permit shall include a condition concerning reissued permits, as applicable. When a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as any final limitations, standards, or conditions in the previous permit shall be incorporated unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 401 KAR 5:070, Section 6.

(b) For effluent limitations established on the basis of 401 KAR 5:080, Section 1(2)(c)2, a permit shall not be renewed, revoked and reissued, or modified on the basis of effluent guidelines promulgated under CWA Section 304(b), 33 USC 1314(b), subsequent to the original issuance of the permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

1. Exceptions. A permit to which paragraph (a) of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

b. Information is available which was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and which would have justified the application of a less stringent effluent limitation at the time of permit issuance;

c. The cabinet determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under 401 KAR 5:080, Section 1(2)(c)2;

d. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

e. The permittee has received a permit modification under 401 KAR 5:055, Section 3; or

f. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification.

2. Limitations. A permit to which paragraph (a) of this subsection applies shall not be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect when the permit is renewed, reissued, or modified. Such a permit to discharge into waters shall not be renewed, issued, or modified to contain less stringent effluent limitation if the implementation of the limitation would result in a violation of a water quality standard under 401 KAR 5:031 applicable to those waters.

(13) [(42)] Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited copermittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this administrative regulation shall be imposed as applicable. Alternatively, the cabinet may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The cabinet's decision to issue a permit with no conditions applicable to any user, to impose conditions on one (1) or more users, to issue separate permits or to require separate applications, and the basis for that decision shall be stated in the fact sheet for the draft permit for the treatment works.

(14) [(43)] Grants or loans. Any conditions imposed in grants or loan made by the cabinet to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations shall be required as applicable.

(15) [(44)] Sewage sludge. Requirements shall be imposed, as applicable, governing the disposal of sewage sludge from publicly owned treatment works, in accordance with 40 CFR Part 503.

(16) [(45)] Coast Guard. When a permit is issued to a facility that



may operate at certain times as a means of transportation over water, the permit shall be conditioned as applicable. A condition that the discharge shall comply with any applicable federal regulations promulgated by the secretary of the department in which the Coast Guard is operating which establish specifications for safe transportation, handling, carriage, and storage of pollutants shall be imposed if applicable.

(17) ~~(46)~~ Navigation. Any conditions that the Secretary of the United States Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 401 KAR 5:075, Section 9, shall be included as applicable.

(18) ~~(47)~~ Duration of permits shall be imposed, as set forth in 401 KAR 5:070, Section 1.

Section 3. Calculating KPDES Permit Conditions. The following provisions shall be used to calculate terms and conditions of the KPDES permit.

(1) Outfalls and discharge points. All permit effluent limitations, standards, and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided: under Section 2(10) of this administrative regulation; with BMPs where limitations are infeasible; and under subsection (8) of this section, limitations on internal waste streams.

(2) Production-based limitations.

(a) In the case of POTWs, permit limitations, standards, or prohibitions shall be calculated based on design flow.

(b)1. Except in the case of POTWs or as provided in subparagraph 2a(ii) of this paragraph, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

2.a.(i) The cabinet may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(ii) For the automotive manufacturing industry only, the cabinet may establish a condition under subparagraph 2a(i) of this paragraph if the applicant satisfactorily demonstrates to the cabinet at the time the application is submitted that its actual production, as indicated in subparagraph 2a(i) of this paragraph, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

b. If the cabinet establishes permit conditions under subparagraph 2a(i) of this paragraph:

(i) The permit shall require the permittee to notify the cabinet at least two (2) business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one (1) month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two (2) consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(ii) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the cabinet under subparagraph 2b of this paragraph, then the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(iii) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable

metal" as described in 40 CFR Part 136 unless:

(a) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form;

(b) In establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1(2), it is necessary to express the limitation on the metal in the dissolved or valent total form to carry out the provisions of KRS 224.16-050; or

(c) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

(4) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable shall be stated as:

(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(b) Average weekly and average monthly discharge limitations for POTWs.

(5) Noncontinuous discharges. Discharges which are not continuous, as defined in 401 KAR 5:002, Section 1, ~~[5:004]~~ shall be particularly described and limited, considering the following factors, as appropriate:

(a) Frequency: for example, a batch discharge shall not occur more than once every three (3) weeks;

(b) Total mass: for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;

(c) Maximum rate of discharge of pollutants during the discharge: for example, not to exceed two (2) kilograms of zinc per minute; and

(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure: for example, shall not contain at any time more than one-tenth (0.1) mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge.

(6) Mass limitations.

(a) All pollutant limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:

1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

2. When applicable standards and limitations are expressed in terms of other units of measurement; or

3. If in establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation, for example, discharges of TSS from certain mining operations, and permit conditions ensure that dilution will not be used as a substitute for treatment.

(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(7) Pollutants in intake water.

(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

1. The applicable effluent limitations and standards contained in 40 CFR Chapter I, Subchapter N, Part 401 et seq., specifically provide that they may be applied on a net basis; or

2. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) shall not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(c) Credit shall be granted only to the extent necessary to meet the applicable limitations or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into

which the discharge is made. The cabinet may waive this requirement if the cabinet finds that no environmental degradation will result.

(e) This subsection shall not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(8) Internal waste streams.

(a) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 2(8) of this administrative regulation shall also be applied to the internal waste streams.

(b) Limits on internal waste streams shall be imposed only when the fact sheet under 401 KAR 5:075, Section 4, sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under ten (10) meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(9) Disposal of pollutants into wells, into POTWs, or by land application. Permit limitations and standards shall be calculated as provided in 401 KAR 5:055, Section 6.

(10) Secondary treatment information. Permit conditions that involve secondary treatment shall be written as provided in 401 KAR 5:045.

~~Section 4. [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 published by the Office of the Federal Register, National Archives and Government Services, General Services Administration, and are 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. Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~

~~(1) Toxic Pollutant Effluent Standards, 40 CFR Part 129, revised as of July 1, 1991;~~

~~(2) Test Procedures for the Analysis of Pollutants, 40 CFR Part 136, revised as of September 11, 1992;~~

~~(3) Federal Effluent Limitations and Standards and New Source Performance Standards, 40 CFR Chapter I, Subchapter N, Parts 401 et seq., revised as of July 1, 1993; and~~

~~(4) Standards for the Use or Disposal of Sewage Sludge, 40 CFR Part 503, revised as of July 1993.~~

~~Section 5.] Primary Industry Categories. Any KPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the KPDES administrative regulations whether or not applicable effluent limitations guidelines have been promulgated.~~

- (1) Adhesives and sealants.
- (2) Aluminum forming.
- (3) Auto and other laundries.
- (4) Battery manufacturing.
- (5) Coal mining.
- (6) Coil coating.
- (7) Copper forming.
- (8) Electrical and electronic components.
- (9) Electroplating.
- (10) Explosives manufacturing.
- (11) Foundries.
- (12) Gum and wood chemicals.
- (13) Inorganic chemicals manufacturing.
- (14) Iron and steel manufacturing.
- (15) Leather tanning and finishing.
- (16) Mechanical products manufacturing.
- (17) Nonferrous metals manufacturing.
- (18) Ore mining.
- (19) Organic chemicals manufacturing.
- (20) Paint and ink formulation.

- (21) Pesticides.
- (22) Petroleum refining.
- (23) Pharmaceutical preparations.
- (24) Photographic equipment and supplies.
- (25) Plastics processing.
- (26) Plastic and synthetic materials manufacturing.
- (27) Porcelain enameling.
- (28) Printing and publishing.
- (29) Pulp and paper mills.
- (30) Rubber processing.
- (31) Soap and detergent manufacturing.
- (32) Steam electric power plants.
- (33) Textile mills.
- (34) Timber products processing.

Section 5. 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 published by the Office of the Federal Register, National Archives and Government Services, General Services Administration, and are 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. Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(1) Toxic Pollutant Effluent Standards, 40 CFR Part 129, revised as of July 1, 2001;

(2) Test Procedures for the Analysis of Pollutants, 40 CFR Part 136, revised as of July 1, 2001;

(3) Federal Effluent Limitations and Standards and New Source Performance Standards, 40 CFR Chapter I, Subchapter N, revised as of July 1, 2001; and

(4) Standards for the Use or Disposal of Sewage Sludge, 40 CFR Part 503, revised as of August 4, 1999.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: May 6, 2002

FILED WITH LRC: May 9, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for June 25, 2002, 9:30 a.m. in the Franklin County Extension Office, 101 Lakeview Court, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by June 18, 2002, 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 provided 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 close of business on June 18, 2002 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: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey W. Pratt, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes baseline conditions and requirements for all KPDES permits.

(b) The necessity of this administrative regulation: This adminis-

trative regulation was needed because all NPDES delegated states must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation contains baseline conditions and requirements for KPDES permits. The impact of the KPDES permit program helps to implement the pollution prevention goals of KRS Chapter 224.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies baseline KPDES permit conditions and requirements. KPDES permits control the introduction of pollutants into waters of the Commonwealth. This is consistent with the goals of KRS Chapter 224.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this administrative regulation: This amendment will correct and update the regulation to make it compatible with the corresponding federal regulation.

(b) The necessity of the amendment to this administrative regulation: If this administrative regulation is not amended as proposed the state regulation will continue to be incompatible with the corresponding federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation still provides for water pollution control as authorized under KRS Chapter 224.

(d) How the amendment will assist in the effective administration of the statutes: The corrected and updated regulation will be compatible with the corresponding federal regulation which will aid in carrying out the goals of KRS Chapter 224.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to over 10,000 permitted entities which may be individuals, businesses or state/local governmental organizations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact of this administrative regulation amendment will be non-existent because the new requirements went into effect when the corresponding federal regulation was adopted.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The first year, the cabinet will incur no additional costs.

(b) On a continuing basis: There will be no additional costs attributable to this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no change in the funding sources due to this amended administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation amendment does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. To the extent that the corresponding federal regulation provided for tiering, these amendments are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to obtain delegation of the federal NPDES permit program.

2. State compliance standards. This regulation amendment establishes state standards that are the same as the corresponding federal standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, this regulation amendment does not establish any requirements stricter than that established by the corresponding federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standards are being proposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation amendment will affect 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. This administrative regulation amendment relates to those entities that operate facilities that discharge into waters of the Commonwealth.

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. None; since this regulation amendment merely provides for compatibility with corresponding federal regulation which has already gone into effect.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amendment)

#### 401 KAR 5:070. Provisions of the KPDES permit.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, ~~224.10-100, 224.16-050,~~ 224.70-100, 224.70-120, 224.99-010, 40 CFR Section 403, 33 USC 1251 et seq. ~~[224.70-110]~~

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, 40 CFR Section 403, 33 USC 1251 et seq., 1342

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.16-050(1) provides that the Natural Resources and Environmental Protection Cabinet may issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act, [33 USC Section 1251 et seq.] subject to the conditions imposed in 33 USC Sections 1342(b) and (d). KRS 224.16-050(1) requires that any exemptions granted in the issuance of NPDES permits shall be pursuant to 33 USC Sections 1311, 1312, and 1326(a). Further, KRS 224.16-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this section any effluent limitation, monitoring requirement or other condition which is more stringent than the effluent limitation, monitoring requirement or other condition which would have been applicable under the federal regulation if the permit were issued by the federal government. This administrative regulation contains the basis for provisions, terms, and effect of a KPDES permit, including permit duration, schedule of compliance, and basis for permit modification or revocation and reissuance.

Section 1. Duration of Permits. (1) KPDES permits shall be effective for a fixed term not to exceed five (5) years. Except as provided in 401 KAR 5:060, Section 1(5)(c), the term of a permit shall not be extended by modification beyond this maximum duration. The cabinet may issue a permit for a duration that is less than the full five (5) year term.

(2) A permit may be issued for the full term if the permit includes effluent limitations and a compliance schedule to meet the requirements of 401 KAR 5:080, Section 1(2) whether or not applicable

federal effluent limitations guidelines have been promulgated or approved.

Section 2. Schedules of Compliance. (1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(a) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible. In addition, schedules of compliance shall require compliance not later than the applicable deadline specified in 401 KAR 5:080.

(b) The first KPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three (3) years before commencement of the relevant discharge. For recommending dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three (3) years before recommencement of discharge.

(c) Interim dates. Except as provided in subsection (2)(a)2 of this section, if a permit establishes a schedule of compliance which exceeds one (1) year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

1. The time between interim dates shall not exceed one (1) year.

2. If the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one (1) year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(d) Reporting. The permit shall be written to require that no later than fourteen (14) days following each interim date and the final date of compliance, the permittee shall notify the cabinet in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(2) Alternative schedules of compliance. A KPDES permit applicant or permittee may cease conducting regulated activities, by termination of direct discharge for KPDES sources, rather than continue to operate and meet permit requirements as follows:

(a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

1. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

2. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which shall ensure timely compliance no later than the statutory deadline.

(c) If the permittee is undecided whether to cease conducting regulated activities, the cabinet shall issue or modify a permit to contain two (2) schedules as follows:

1. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

2. One (1) schedule shall lead to timely compliance no later than the deadline contained in 401 KAR 5:080;

3. The second schedule shall lead to cessation of regulated activities by a date which shall ensure timely compliance no later than the deadline specified in 401 KAR 5:080; and

4. Each permit containing two (2) schedules shall include a requirement that after the permittee has made a final decision under subparagraph 1 of this paragraph it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(d) The applicant's or permittee's decision to cease conducting

regulated activities shall be evidenced by a firm public commitment satisfactory to the cabinet, such as a resolution of the board of directors of a corporation.

Section 3. Requirements for Recording and Reporting of Monitoring Results. All permits shall specify:

(1) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring; and

(3) Applicable reporting requirements based upon the impact of the regulated activity and as specified in 401 KAR 5:065, Sections 1 and 2. Reporting shall be no less frequent than specified in Section 2 of this administrative regulation.

Section 4. Effect of a Permit. (1) Except for any toxic effluent standards and prohibitions included in 401 KAR 5:065, Section 1(1)(b), compliance with a KPDES permit during its term constitutes compliance, for purposes of enforcement, with the KPDES program. However, a permit may be modified, revoked and reissued, or revoked during its term for cause as set forth in Sections 6 and 7 of this administrative regulation.

(2) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(3) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or administrative regulations.

Section 5. Transfer of Permits. (1) Transfers by modification. Except as provided in subsection (2) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, under Section 6 of this administrative regulation, or if a minor modification has been made to identify the new permittee and incorporate such other requirements as may be necessary under the KPDES administrative regulations.

(2) Automatic transfers. As an alternative to transfers under subsection (1) of this section, any KPDES permit may be automatically transferred to a new permittee if:

(a) The current permittee notifies the cabinet at least thirty (30) days in advance of the proposed transfer date in paragraph (b) of this subsection;

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(c) The cabinet does not notify the existing permittee and the proposed new permittee of an intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under Section 6(3) of this administrative regulation. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b) of this subsection.

Section 6. Modification or Revocation and Reissuance of Permit. When the cabinet receives any information, the cabinet may determine whether or not one (1) or more of the causes, listed in subsections (1) and (2) of this section for modification or revocation and reissuance or both, exist. If cause exists, the cabinet may modify or revoke and reissue the permit accordingly, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. If cause does not exist under this section, the cabinet shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in subsection (3) of this section for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit shall be prepared and other procedures in 401 KAR 5:075 shall be followed.

(1) Causes for modification. The following are causes for modification but not revocation and reissuance of permits unless the permittee agrees to revocation and reissuance as well as modification of a permit.

(a) Alterations. If there are material and substantial alterations or additions made to the permitted facility or activity which occurred after permit issuance, the alterations may justify the application of permit conditions that are different or absent in the existing permit.

(b) Information. If the cabinet has received information, cause may exist for modification. KPDES permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, except for revised administrative regulations, guidance, or test methods which would have justified application of different conditions at the time of permit issuance. In addition, the applicant shall show that the information would have justified the application of different permit conditions at the time of issuance. For KPDES general permits this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(c) New administrative regulations. If the standards or administrative regulations on which the permit was based have been changed by promulgation of amended standards or administrative regulations or by judicial decision after the permit was issued, then cause may exist for modification. However, the permit shall be modified only as follows:

1. For promulgation of amended standards or administrative regulations, when:

a. The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards of 401 KAR 5:031, or the secondary treatment administrative regulations of 401 KAR 5:045;

b. EPA has revised, withdrawn, or modified that portion of the federal regulation or effluent limitation guideline or has approved a cabinet action with regard to a water quality standard on which the permit condition was based; and

c. A permittee requests modification in accordance with 401 KAR 5:075, Section 2, within ninety (90) days after the amendment, revision, or withdrawal is promulgated.

2. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated effluent limitation guidelines, if the remand and stay concern that portion of the guidelines on which the permit condition was based and a request is filed by the permittee in accordance with 401 KAR 5:075, Section 2, within ninety (90) days of judicial remand.

(d) Compliance schedules. A permit may be modified if the cabinet determines good cause exists for modification of a compliance schedule, based on an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, a KPDES compliance schedule shall not be modified to extend beyond an applicable statutory deadline in 401 KAR 5:080.

(e) For a small municipal separate storm sewer system (MS4), to include an effluent limitation requiring implementation of minimum control measures as specified in 401 KAR 5:060, Section 12(9)(b), when:

1. The permit does not include these measures based upon the determination that another entity was responsible for implementation of the requirements; and

2. The other entity fails to implement measures that satisfy the requirements.

(f) In addition the cabinet may modify a permit:

1. When the permittee has filed a request for any variance under 401 KAR 5:055, Section 7, or 401 KAR 5:080, Section 3, and the cabinet processes the request under the applicable provisions.

2. When required to incorporate applicable toxic effluent standard or prohibition under 401 KAR 5:065, Section 2(2).

3. When required by the "reopener" conditions in a permit, which are established in the permit under 401 KAR 5:065, Section 2(3), for toxic effluent limitations, or 401 KAR 5:065, Section 2 (40 CFR Section 403.10(e), pretreatment program).

4. Upon request of a permittee who qualifies for a change in effluent limitations based on pollutants in intake water under 401 KAR 5:065, Section 3(7).

5. When a discharger is no longer eligible for net limitations, as provided in 401 KAR 5:065, Section 3(7).

6. As necessary under EPA effluent limitations guidelines concerning compliance schedule for development of a pretreatment program.

7. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c).

8. When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or by-product any toxic pollutant which was not reported in the permit application under 401 KAR 5:060, Section 2.

9. To establish a "notification level" as provided in 401 KAR 5:065, Section 2(6).

10. To modify a schedule of compliance to reflect the time lost during the construction of an innovative or alternative facility, in the case of the POTW which has received a grant under CWA Section 202(a)(3), [43 USC Section 1282(a)(3)] for 100 percent of the cost to modify or replace facilities constructed with a grant for innovative or alternative wastewater technology under CWA Section 202(a)(2), [43 USC Section 1282(a)(2)]. In no case shall the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance indicated in 401 KAR 5:080.

11. Upon failure of the cabinet to notify an affected state whose waters may be affected by a discharge from Kentucky.

12. When the permit becomes final and effective on or after August 19, 1981, if the permittee shows a good cause for the modification, to conform to changes respecting the following administrative regulation: 401 KAR 5:065, Section 1(3) and (4).

13. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

14. When the discharger has installed the treatment technology considered by the cabinet in setting effluent limitations imposed under 401 KAR 5:080, Section 1 and CWA Section 402(a)(1), [43 USC Section 1342(a)(1)] and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

15. When the permit becomes final and effective on or after March 9, 1982, and the permittee applies for the modification no later than January 24, 1985, if the permittee shows good cause in its request and that it qualifies for the modification, to conform to changes respecting the following administrative regulations: 401 KAR 5:055, Section 6(2) and 401 KAR 5:065, Section 3(2) and (3).

(2) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively revoke and reissue a permit:

(a) Cause exists for revocation under Section 7 of this administrative regulation and the cabinet determines that modification or revocation and reissuance is appropriate.

(b) The cabinet has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but shall not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) Minor modifications of permits. Upon the consent of the permittee, the cabinet shall modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of 401 KAR 5:075. Any permit modification not processed as a minor modification under this section shall be made for cause and with a 401 KAR 5:075 draft permit and public notice as required under this section. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirements;

(d) Allow for a change in ownership or operational control of a facility where the cabinet determines that no other change in the permit is necessary, if a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the cabinet;



(e) Change the construction schedule for a discharger which is a new source;

(f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

(g) Incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 401 KAR 5:057 or a modification thereto that has been approved in accordance with the procedures in 401 KAR 5:057 as enforceable conditions of the POTW's permits.

Section 7. Revocation of Permit. (1) The following are causes for revoking a permit during its term, or for denying a renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact at any time; or

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or revocation.

(2) KPDES permits may be modified or revoked when there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit for example, plant closure or termination of discharge by connection to a POTW.

(3) The cabinet shall follow the applicable procedures in ~~401 KAR 5:075~~ in revoking any ~~[a]~~ KPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW, but not by land application or disposal into a well, the cabinet may revoke the permit by notice to the permittee. Revocation by notice shall be effective ~~thirty (30) days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the cabinet shall follow 401 KAR 5:075, Section 2, revocation procedures. Expedited permit revocation procedures are not available to permittees that are subject to pending enforcement actions including citizen suits brought under KRS Chapter 224. If requesting expedited permit revocation procedures, a permittee shall certify that it is not subject to any pending enforcement actions including citizen suits brought under KRS Chapter 224.~~

Section 8. Federal Regulation Adopted Without Change. The following federal regulation governs the subject matter of this administrative regulation and is hereby adopted without change. 40 CFR Section 403.10(e), "State Pretreatment Program in Lieu of POTW Program", revised as of July 1, 2001. The federal regulation 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. Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: May 6, 2002

FILED WITH LRC: May 9, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for June 25, 2002, 9:30 a.m. in the Franklin County Extension Office, 101 Lakeview Court, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by June 18, 2002, 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 provided 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 close of business on June 18,

2002 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: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey W. Pratt, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes routine provisions for all KPDES permits.

(b) The necessity of this administrative regulation: This administrative regulation was needed because all NPDES delegated states must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation contains routine provisions for KPDES permits. The impact of the KPDES permit program helps to implement the pollution prevention goals of KRS Chapter 224.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation contains routine KPDES permit provisions. KPDES permits control the introduction of pollutants into waters of the Commonwealth. This is consistent with the goals of KRS Chapter 224.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this administrative regulation: This amendment will correct and update the regulation to make it compatible with the corresponding federal regulation.

(b) The necessity of the amendment to this administrative regulation: If this administrative regulation is not amended as proposed the state regulation will continue to be incompatible with the corresponding federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation still provides for water pollution control as authorized under KRS Chapter 224.

(d) How the amendment will assist in the effective administration of the statutes: The corrected and updated regulation will be compatible with the corresponding federal regulation which will aid in carrying out the goals of KRS Chapter 224.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to over 10,000 permitted entities which may be individuals, businesses or state/local governmental organizations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact of this administrative regulation amendment will be nonexistent because the new requirements went into effect when the corresponding federal regulation was adopted.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The first year, the cabinet will incur no additional costs.

(b) On a continuing basis: There will be no additional costs attributable to this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no change in the funding sources due to this amended administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This ad-



ministrative regulation amendment does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. To the extent that the corresponding federal regulation provided for tiering, these amendments are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to obtain delegation of the federal NPDES permit program.

2. State compliance standards. This regulation amendment establishes state standards that are the same as the corresponding federal standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, this regulation amendment does not establish any requirements stricter than that established by the corresponding federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standards are being proposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation amendment will affect 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. This administrative regulation amendment relates to those entities that operate facilities that discharge into waters of the Commonwealth.

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. None; since this regulation amendment merely provides for compatibility with the corresponding federal regulation which has already gone into effect.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amendment)

**401 KAR 5:075. Cabinet review procedures for KPDES permits.**

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 33 USC 1251 et seq. ~~224.40-100, 224.40-420, 224.40-440, 224.40-470, 224.16-050, 224.70-100, 224.70-110~~

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, 33 USC 1251 et seq., 1342

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the Natural Resources and Environmental Protection Cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050(1) establishes that the cabinet may issue federal permits pursuant to 33 USC Section 1342(b) of the Federal Water Pollution Control Act (33 USC Section 1251 et seq.) subject to the conditions imposed in

33 USC Section 1342(b) and (d). This administrative regulation sets forth the procedures through which the cabinet will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits.

Section 1. Review of the Application. (1) Any person who requires a permit under the KPDES program shall complete, sign, and submit to the cabinet an application for the permit as required under 401 KAR 5:060, Section 1. Applications are not required for KPDES general permits. However, operators who elect to be covered by a general permit shall submit written notification to the cabinet at such time as the cabinet indicates in Section 3 of this administrative regulation.

(2) The cabinet shall not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by 401 KAR 5:060, Section 1.

(3) Permit applications shall comply with the signature and certification requirements of 401 KAR 5:060, Section 9.

(4) The cabinet shall review for completeness every application for a KPDES permit. Each application submitted by a KPDES new source or KPDES new discharger shall be reviewed for completeness by the cabinet within thirty (30) days of its receipt. Each application for a KPDES permit submitted by an existing source shall be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. If the application is for an existing source, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information. The cabinet shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the cabinet may request additional information from an applicant when necessary to clarify, modify, or supplement previously submitted material. Requests for the additional information shall not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(6) If the cabinet decides that a site visit is necessary for any reason in conjunction with the processing of an application, the cabinet shall notify the applicant and a date will be scheduled.

(7) The effective date of an application is the date on which the cabinet notifies the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source, or major facility new discharger, the cabinet shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule will specify target dates by which the cabinet intends to:

(a) Prepare a draft permit;

(b) Give public notice;

(c) Complete the public comment period, including any public hearing;

(d) Issue a final permit; and

(e) Complete any formal proceedings under this administrative regulation.

(9) Conflicts of interest.

(a) Any person who issues a permit will be subject to the conflict of interest provisions of KRS 11A.020 and 11A.030. The director of the Division of Water shall not receive or have received during the previous two (2) years, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(b) Any person aggrieved by the issuance of a permit under the KPDES administrative regulations may challenge the permit pursuant to Section 13 of this administrative regulation if paragraph (a) of this subsection has been violated.

(c) The hearing officer shall remand any permit issued in violation of paragraph (a) of this subsection to the cabinet for reconsideration.

(d) Following remand, any cabinet employee who reconsiders the permit shall be subject to the conflict of interest provisions set forth in paragraph (a) of this subsection. The reconsideration shall require a new public comment period and public hearing only if in-

formation offered during earlier permit proceedings was excluded by the cabinet as a direct result of a conflict of interest.

Section 2. Review Procedures for Permit Modification, Revocation and Reissuance, or Revocation. (1) Permits may be modified, revoked and reissued, or revoked either at the request of any interested person, including the permittee, or upon the cabinet's initiative. However, permits may only be modified, revoked and reissued, or revoked for the reasons specified in 401 KAR 5:070, Sections 6 or 7. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the cabinet decides the request is not justified, the cabinet shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or revocation are not subject to public notice, comment, or hearings.

(3) If the cabinet tentatively decides to modify or revoke and reissue a permit under 401 KAR 5:070, Section 6, the cabinet shall prepare a draft permit under Section 3 of this administrative regulation incorporating the proposed changes. The cabinet may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the cabinet shall require the submission of a new application.

(a) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as described in 401 KAR 5:070, Section 6(3) shall not be subject to the requirements of this section.

(4) If the cabinet preliminarily decides to revoke a permit under 401 KAR 5:070, Section 7, the cabinet shall issue a notice of intent to revoke. A notice of intent to revoke is a type of draft permit which follows the same procedure as any draft permit prepared under Section 3 of this administrative regulation.

Section 3. Draft Permits. (1) Once an application is complete, the cabinet shall preliminarily decide whether to prepare a draft permit or to deny the application.

(2) If the cabinet makes a preliminary decision to deny the permit application, the cabinet shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the cabinet's determination under Section 11 of this administrative regulation is that the preliminary decision to deny the permit application was incorrect, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (4) of this section.

(3) If the cabinet makes a preliminary decision to issue a KPDES general permit, the cabinet shall prepare a draft general permit in accordance with subsection (4) of this section.

(4) If the cabinet decides to prepare a draft permit, the cabinet shall prepare a draft permit that contains the following information:

- (a) All conditions under 401 KAR 5:065, Section 1;
- (b) All compliance schedules under 401 KAR 5:070, Section 2;
- (c) All monitoring requirements under 401 KAR 5:070, Section 3;

and

(d) Effluent limitations, standards, prohibitions, and conditions under 401 KAR 5:057, 401 KAR 5:060, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080 and all variances that are to be included.

(5) All draft permits prepared by the cabinet under this section shall be accompanied by a fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The cabinet shall give notice of opportunity for a public hearing, issue a final decision, and respond to comments. A demand for a hearing may be made pursuant to KRS 224.10-420 and Section 13 of this administrative regulation following the issuance of a final decision.

Section 4. Fact Sheets. (1) A fact sheet shall be prepared for every draft permit for a major KPDES facility or activity, for every KPDES general permit, for every KPDES draft permit that incorporates a variance or requires an explanation under subsection (3) of this section, and for every draft permit which the cabinet finds is the subject of widespread public interest or raises major issues. The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The cabinet shall send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit;

(b) A quantitative and qualitative description of the discharges described in the application;

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 5 of this administrative regulation and the address where comments will be received;

2. Procedures for requesting a hearing and the nature of that hearing;

3. Any other procedures under KRS 224.10-420 and Section 13 of this administrative regulation by which the public may participate in the final decision;

(f) Name and telephone number of a person to contact for additional information; and

(g) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guidelines or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

(3)(a) When the draft permit contains any of the following conditions, an explanation of the reasons why the conditions are applicable:

1. Limitations to control toxic pollutants under 401 KAR 5:065, Section 2(5);

2. Limitations on internal waste streams under 401 KAR 5:065, Section 3(8); ~~or~~

3. Limitations on indicator pollutants under 401 KAR 5:080, Section 1(2)(a);

4. Limitations set on a case-by-case basis under 401 KAR 5:080, Section 1(2)(c)2; or

5. Limitations to meet the criteria for permit issuance under 401 KAR 5:055, Section 2(7).

(b) For every permit to be issued to a treatment works owned by a person other than the Commonwealth or its subdivisions, an explanation of the cabinet's decision on regulation of users under 401 KAR 5:065, Section 2(12).

(4) When appropriate, a sketch or detailed description of the location of the discharge described in the application.

(5) Justification for waiver of any application requirements under 401 KAR 5:060, Section 5.

Section 5. Public Notice of Permit Actions and Public Comment Period. (1) Scope.

(a) The cabinet shall give public notice that the following actions have occurred:

1. A permit application has been preliminarily denied under Section 3(2) of this administrative regulation;

2. A draft permit has been prepared under Section 3(4) of this administrative regulation;

3. A hearing has been scheduled under Section 7 of this administrative regulation; or

4. A KPDES new source determination has been made in accordance with the definition in 401 KAR 5:002 ~~[5:004]~~.

(b) No public notice is required when a request for permit modification, revocation and reissuance, or revocation is denied under Section 2 of this administrative regulation. Written notice of that denial shall be given to the requester and to the permittee.

(c) Public notices may describe more than one (1) permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (1) of this section shall allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.

(3) Methods. Public notice of activities described in subsection (1)(a) of this section shall be given by the following methods:

(a) The cabinet shall mail a notice to the persons listed in subparagraphs 1 through 5 of this paragraph. Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits.

1. The applicant, except for KPDES general permittees, and Region IV, EPA.

2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Kentucky Historical Society and other appropriate government authorities, including any affected states;

3. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;

4. Any user identified in the permit application of a privately owned treatment works; and

5. Persons on a mailing list developed by:

a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The cabinet may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who fails to respond to such a request.

(b) For major permits and KPDES general permits, the cabinet shall publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Kentucky law; and

(d) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices. All public notices issued under this administrative regulation shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of KPDES draft general permits under 401 KAR 5:055, Section 5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for KPDES general permits when there is no application;

4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, fact sheet, and the application;

5. A brief description of the comment procedures required by Sections 6 and 7 of this administrative regulation and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. A general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement shall be satisfied by a map or description of the permit area; and

7. Any additional information considered necessary or proper.

(b) Public notices for hearings. In addition to the general public notice described in paragraph (a) of this subsection, the public notice for a permit hearing under Section 7 of this administrative regulation shall contain the following information:

1. Reference to the date of previous public notices, relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under 401 KAR 5:055, Section 7(4). In addition to the information required under subsection (4)(a) of this section, public notice of a KPDES draft permit for a discharge when a 401 KAR 5:055, Section 7(4) request has been filed under 401 KAR 5:055, Section 3, shall include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under 401 KAR 5:065, Section 2(1) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under CWA Sections 301 or 306 (33 USC Sections 1311 or 1316); and

2. A statement that a 401 KAR 5:055, Section 7(4), request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

(5) In addition to the general public notice described in subsection (4)(a) of this section all persons identified in subsection (3)(a)1, 2, 3, and 4 of this section shall be mailed a copy of the fact sheet, the permit application (if any) and the draft permit (if any).

Section 6. Public Comments and Requests for Public Hearings. During the public comment period provided under Section 5 of this administrative regulation, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Section 12 of this administrative regulation.

Section 7. Public Hearings. (1) The cabinet shall hold a public hearing when a significant degree of public interest in a draft permit is found on the basis of requests. The cabinet also may hold a public hearing whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

(2) Public notice of the hearing shall be given as specified in Section 5 of this administrative regulation.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Section 5 of this administrative regulation shall automatically be extended to the close of any public hearing under this section. The cabinet may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.

Section 8. Obligation to Raise Issues and Provide Information During the Public Comment Period. All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the cabinet's preliminary decision to deny an application, revoke a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under Section 5 of this administrative regulation. All supporting materials shall be included in full and may not be incorporated by reference, unless they consist of state or federal statutes and regulations, EPA or the cabinet's documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the record available to the cabinet as directed by the cabinet. A comment period longer than thirty (30) days may be necessary in complicated proceedings to give commenters a reasonable

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opportunity to comply with the requirements of this section. Commenters may request longer comment periods, which may be established under Section 5 of this administrative regulation. Nothing in this section shall be construed to prevent any person aggrieved by a final permit decision from filing a demand for a hearing under KRS 224.10-420 and Section 13 of this administrative regulation.

Section 9. Conditions Requested by the Corps of Engineers and Other Government Agencies. (1) If during the comment period for a KPDES draft permit, the district engineer of the Corps of Engineers advises the cabinet in writing that anchorage and navigation of any of the waters of the Commonwealth would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the district engineer advises the cabinet that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the cabinet shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and shall not be made through the procedures provided in this administrative regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the KPDES permit for the duration of that stay.

(2) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the cabinet may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of KRS Chapter 224.

(3) In appropriate cases the cabinet may consult with one (1) or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the fact sheet or the draft permit.

Section 10. Reopening of the Public Comment Period. (1) If any data information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the cabinet may take one (1) or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under Section 3 of this administrative regulation;

(b) Prepare a revised fact sheet under Section 4 of this administrative regulation and reopen the comment period; or

(c) Reopen and extend the comment period under Section 5 of this administrative regulation to give interested persons the opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 5 of this administrative regulation shall define the scope of the reopening.

(3) Public notice of any of the above actions will be issued under Section 5 of this administrative regulation.

Section 11. Issuance and Effective Date of Permit. (1) After the close of the public comment period under Section 5 of this administrative regulation, the cabinet shall issue, deny, modify, revoke and reissue, or revoke a permit. The cabinet shall notify the applicant and each person who has submitted written comments or requested notice of that determination. This notice shall include reference to the procedures for appealing the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or revoke a permit.

(2) A final permit decision shall become effective thirty (30) days after the service of notice of the decision under subsection (1) of this section, unless:

(a) A later effective date is specified in the decision;

(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or

(c) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(3) The determination which is a condition precedent to de-

manding a hearing under KRS 224.10-420(2) and Section 13 of this administrative regulation shall be the final permit decision. The thirty (30) day appeal period shall begin on the date the determination is entered by the cabinet and shall not begin on the date the permit decision becomes effective.

Section 12. Response to Comments. (1) When any final permit decision is issued under Section 11 of this administrative regulation the cabinet shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. This response shall fully consider all comments resulting from any hearing conducted under this administrative regulation.

(2) The response to comments shall be available to the public. Any demand for a hearing on this response shall be filed according to procedures specified in KRS 224.10-420, 224.10-440, 224.10-470 and any administrative regulations promulgated pursuant thereto.

Section 13. Hearings under KRS 224.10-420. (1) A determination under Section 11 of this administrative regulation when issued by the cabinet shall be subject to a demand for a hearing pursuant to KRS 224.10-420(2).

(2) Any person aggrieved by the issuance of a final permit may demand a hearing pursuant to KRS 224.10-420(2).

(3) Any hearing held pursuant to this section shall be subject to the provisions of KRS 224.10-440 and 224.10-470.

(4) Failure to raise issued pursuant to Section 8 of this administrative regulation shall not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.10-420(2).

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: May 6, 2002

FILED WITH LRC: May 9, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for June 25, 2002, 9:30 a.m. in the Franklin County Extension Office, 101 Lakeview Court, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by June 18, 2002, 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 provided 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 close of business on June 18, 2002 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: Jeffrey W. Pratt, Director, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jeffrey W. Pratt, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes review procedures for all KPDES permits.

(b) The necessity of this administrative regulation: This administrative regulation was needed because all NPDES delegated states must have compatible state regulations.

(c) How this administrative regulation conforms to the content of

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the authorizing statutes: This administrative regulation establishes review procedures for KPDES permits. The impact of the KPDES permit program helps to implement the pollution prevention goals of KRS Chapter 224.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation contains cabinet review procedures for KPDES permits. KPDES permits control the introduction of pollutants into waters of the Commonwealth. This is consistent with the goals of KRS Chapter 224.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this administrative regulation: This amendment will correct and update the regulation to make it compatible with the corresponding federal regulation.

(b) The necessity of the amendment to this administrative regulation: If this administrative regulation is not amended as proposed the state regulation will continue to be incompatible with the corresponding federal regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amended regulation still provides for water pollution control as authorized under KRS Chapter 224.

(d) How the amendment will assist in the effective administration of the statutes: The corrected and updated regulation will be compatible with the corresponding federal regulation which will aid in carrying out the goals of KRS Chapter 224.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to over 10,000 permitted entities which may be individuals, businesses or state/local governmental organizations.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact of this administrative regulation amendment will be non-existent because the new requirements went into effect when the corresponding federal regulation was adopted.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The first year, the cabinet will incur no additional costs.

(b) On a continuing basis: There will be no additional costs attributable to this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no change in the funding sources due to this amended administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation amendment does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. To the extent that the corresponding federal regulation provided for tiering, these amendments are tiered. Permit requirements are adjusted to reflect the nature or size of the wastewater discharge.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate to obtain delegation of the federal NPDES permit program.

2. State compliance standards. This regulation amendment establishes state standards that are the same as the corresponding federal standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

ment does not establish any requirements stricter than that established by the corresponding federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standards are being proposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation amendment will affect 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. This administrative regulation amendment relates to those entities that operate facilities that discharge into waters of the Commonwealth.

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. None; since this regulation amendment merely provides for compatibility with the corresponding federal regulation which has already gone into effect.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

### JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

#### 501 KAR 6:170. Green River Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Green River Correctional Complex.

Section 1. Incorporation by Reference. (1)(a) Green River Correctional Complex Policies and Procedures, May 15, 2002 (February 13, 2004), is incorporated by reference.

~~[(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

~~(2) Green River Correctional Complex Policies and Procedures include:~~

GRCC 01-01-01	Establishment of the GRCC Institutional Operations Manual (Amended 5/15/02)
GRCC 01-01-02	Organization of GRCC Operations Manual
GRCC 01-01-03	Formulation and Revision of GRCC Operating Procedures (Amended 5/15/02)
GRCC 01-02-01	Organization and Assignment of Responsibility (Amended 5/15/02) <del>((Amended 2/4/04))</del>
GRCC 01-03-01	Staff Meetings, Purpose and Requirements (Amended 5/15/02) <del>((Amended 2/4/04))</del>
GRCC 01-04-01	Monthly Reports
GRCC 01-05-01	Procedures Officer
GRCC 01-06-01	Inmate Access to and Communication with GRCC Staff <del>((Amended 2/4/04))</del>

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GRCC 01-07-01	Institutional Tours of GRCC	GRCC 09-02-01	Drug Abuse Testing (Amended 5/15/02)
GRCC 01-08-01	GRCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive and Community Agencies	GRCC 09-03-01	Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power (Added 5/15/02)
GRCC 01-09-01	Duty Officer Responsibilities <del>((Amended 2/13/01))</del>	GRCC 09-04-01	Inmate Death (Added 5/15/02)
GRCC 01-10-01	Smoking: GRCC Facility (Amended 5/15/02) <del>((Amended 2/13/01))</del>	<del>GRCC 09-09-01</del>	<del>Contraband Control: Collection, Preservation and Disposition of Contraband and Identification of Physical Evidence (Deleted 5/15/02))</del>
GRCC 01-11-01	Institutional Planning	GRCC 09-13-01	Establishment of Security Posts at GRCC (Amended 5/15/02)
GRCC 01-12-01	Public Information and Media Communication <del>((Amended 2/13/01))</del>	GRCC 09-14-01	Vehicle Usage (State and Private) (Amended 5/15/02)
GRCC 02-01-01	Fiscal Management Organization	GRCC 10-01-01	Special Management Unit (Amended 5/15/02) <del>((Amended 2/13/01))</del>
GRCC 02-01-02	Fiscal Management Accounting Procedures	GRCC 11-01-01	Food Service: Guidelines (Amended 5/15/02)
GRCC 02-01-03	Fiscal Management Agency Funds <del>((Amended 2/13/01))</del>	GRCC 11-02-01	Food Service: Security (Amended 5/15/02)
GRCC 02-01-04	Fiscal Management Insurance	GRCC 11-03-01	Dining Room Guidelines (Amended 5/15/02)
GRCC 02-02-01	Fiscal Management: Budget	GRCC 11-04-01	Food Service: Meals (Amended 5/15/02)
GRCC 02-03-01	Fiscal Management: Audits <del>((Amended 2/13/01))</del>	GRCC 11-04-02	Food Service: Menu, Nutrition and Restricted [Special] Diets (Amended 5/15/02)
GRCC 02-04-01	Purchase and Supply Requisitions	GRCC 11-06-01	Health Requirements of Food Handlers (Amended 5/15/02)
GRCC 02-05-01	Warehouse Operation	GRCC 11-07-01	Food Service: Inspections and Sanitation (Amended 5/15/02)
GRCC 02-06-01	Inmate Canteen	<del>GRCC 11-08-01</del>	<del>Food Service: Purchasing, Storage and Farm Products (Added 5/15/02)</del>
GRCC 02-06-02	Inmate Canteen Committee <del>((Amended 2/13/01))</del>	GRCC 12-01-01	Clothing, Bedding, Hygiene Supplies and Barber Shop (Amended 5/15/02) <del>[Services]</del>
GRCC 02-07-01	Inmate Personal Funds	GRCC 12-02-01	Sanitation Inspections <del>((Added 2/13/01))</del>
GRCC 02-08-01	Inventory Control	GRCC 12-03-01	Vermin and Insect Control <del>((Added 2/13/01))</del>
GRCC 03-01-01	General Guidelines for GRCC Employees (Amended 5/15/02) <del>((Amended 2/13/01))</del>	GRCC 13-01-01	Organization of Medical Services (Amended 5/15/02)
GRCC 03-02-01	<del>[Essential]</del> Personnel Designated for Mandatory Operations During Inclement Weather or Emergency Conditions (Amended 5/15/02)	GRCC 13-02-01	Medical Services: Sick Call, Physician's Clinics and Pill Call (Amended 5/15/02)
GRCC 03-03-01	Employee Recognition Program	GRCC 13-02-02	Medical Services: Copayment (Amended 5/15/02)
GRCC 03-04-01	Employee Grievance and EEO Complaint Procedure	GRCC 13-02-03	Continuing of Care: Health Evaluations, Intra-system Transfer, Individual Treatment Plans (Amended 5/15/02)
GRCC 03-05-01	Drug Free Work Place	GRCC 13-03-01	Use of Pharmaceutical Products (Amended 5/15/02)
GRCC 03-06-01	Organization of Payroll and Personnel Records (Amended 5/15/02) <del>((Amended 2/13/01))</del>	GRCC 13-04-01	Health Records (Amended 5/15/02)
GRCC 03-07-01	Personnel Staffing Review (Amended 5/15/02)	GRCC 13-04-02	Psychological and Psychiatric Reports (Amended 5/15/02)
GRCC 03-08-01	Personnel Registers (Amended 5/15/02)	GRCC 13-05-01	Management of Serious and Infectious Diseases (Amended 5/15/02)
GRCC 03-09-01	Selection and Promotion of Employees (Amended 5/15/02)	GRCC 13-06-01	Mental Health Services (Amended 5/15/02)
GRCC 03-10-01	Medical Examination for New Employees (Amended 5/15/02)	GRCC 13-07-01	Medical Restraints (Amended 5/15/02)
GRCC 03-11-01	Kentucky Employee Assistance Program	GRCC 13-08-01	Eye Care (Amended 5/15/02)
GRCC 03-12-01	Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers	GRCC 13-09-01	Dental Care (Amended 5/15/02)
GRCC 03-13-01	Employee Evaluations (Amended 5/15/02)	GRCC 13-10-01	Transfers and Medical Profiles (Amended 5/15/02)
GRCC 03-14-01	Student Placement Program	GRCC 13-11-01	Informed Consent (Amended 5/15/02)
GRCC 03-15-01	Documentation Requirement Guidelines (Amended 5/15/02)	GRCC 13-12-01	Infirmity Care (Amended 5/15/02)
GRCC 03-16-01	New Employee Orientation (Amended 5/15/02)	GRCC 13-13-01	Inmate Self-administration of Medication (Amended 5/15/02)
GRCC 03-17-01	Resignation, Transfer or Termination Clearance Procedure	GRCC 13-15-01	Health Education Program and Detoxification <del>((Amended 2/13/01))</del>
GRCC 04-01-01	Employee Training and Staff Development	GRCC 14-01-01	Inmate Rights and Responsibilities (Amended 5/15/02)
GRCC 05-01-01	Information System <del>((Amended 2/13/01))</del>	GRCC 14-02-01	Legal Services Program <del>((Amended 2/13/01))</del>
GRCC 05-02-01	Outside Consultation and Research	GRCC 16-01-01	Inmate Visiting (Amended 5/15/02)
GRCC 06-01-01	Offender Records	GRCC 16-02-02	Inmate Correspondence and Privileged Mail (Amended 5/15/02)
GRCC 06-02-01	Storage of Expunged Records	GRCC 16-03-01	Inmate Telephone Communications (Amended 5/15/02)
GRCC 07-01-01	Maintenance Requests	GRCC 16-04-01	Inmate Packages (Amended 5/15/02)
GRCC 07-02-01	Preventive Maintenance Program (Amended 5/15/02)	GRCC 17-01-01	GRCC Inmate Property Control (Amended 5/15/02)
GRCC 07-03-01	Mechanical Equipment Repair and Control of Hazardous Energy (Amended 5/15/02)	GRCC 17-02-01	GRCC Inmate Receiving and Orientation Process (Amended 5/15/02)
GRCC 08-01-01	Occupational Exposure to Serious and Infectious Diseases (Amended 5/15/02) <del>((Amended 2/13/01))</del>	GRCC 17-03-01	Procedure for Sending Televisions to Outside Dealer for Repair (Amended 5/15/02)
GRCC 08-02-01	Fire Safety (Amended 5/15/02) <del>((Amended 2/13/01))</del>	GRCC 18-01-01	Inmate Classification (Amended 5/15/02)
GRCC 08-04-01	Control of Caustic, Toxic, Flammable, Hazardous and Other Materials		
GRCC 08-04-02	Hazardous Chemicals and Material Safety Data Sheet		
GRCC 09-01-01	Inmate Counts (Amended 5/15/02)		



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GRCC 18-02-01	Meritorious Housing (Amended 5/15/02)
GRCC 18-02-02	Meritorious Visitation Program (Amended 5/15/02)
GRCC 19-01-01	Inmate Work Program (Amended 5/15/02) [Programs]
GRCC 19-01-02	Unassigned Status (Amended 5/15/02)
GRCC 20-01-01	Educational Programs (Amended 5/15/02) [(Amended 2/13/01)]
GRCC 21-01-01	Library Services [(Amended 2/13/01)]
GRCC 22-01-01	Recreation Programs (Amended 5/15/02)
GRCC 22-02-01	Inmate Clubs and Organizations (Amended 5/15/02)
GRCC 22-03-01	Employee Use of Recreation Facilities [(Added 2/13/01)]
GRCC 22-04-01	Arts and Crafts Projects (Amended 5/15/02) [Project]
GRCC 22-05-01	Inmate Photo Project (Amended 5/15/02)
GRCC 23-01-01	Religious Programs (Amended 5/15/02)
GRCC 23-02-01	Death or Hospitalization of an Inmate's Family Member and Notification of Inmates (Amended 5/15/02)
GRCC 24-01-01	Social Services and Counseling Program (Amended 5/15/02)
GRCC 25-01-01	Prerelease Program (Amended 5/15/02)
GRCC 25-01-02	Inmate Release Process (Amended 5/15/02)
GRCC 25-02-01	Parole Hearing Procedure (Amended 5/15/02)
GRCC 26-01-01	Citizen Involvement and Volunteer Services Program (Added 5/15/02)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

VERTNER L. TAYLOR, Commissioner

APPROVED BY AGENCY: May 9, 2002

FILED WITH LRC: May 15, 2002 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 2002 at 9 a.m., in the Office of General Counsel, 2439 Lawrenceburg Road, Frankfort Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 14, 2002, 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, Deputy General Counsel, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jack Damron, Deputy General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of Green River Correctional Complex regarding the rights and responsibilities of Green River Correctional Complex employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the operation of Green River Correctional Complex.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to Green River Correc-

tional Complex employees and the inmate population as to their duties, rights privileges and responsibilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments shall bring the policies and procedures in compliance with state and federal law, including KRS Chapter 13A, and ACA Standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Green River Correctional Complex.

(d) How the amendment will assist in the effective administration of the statutes: The amendments shall make minor changes to conform to KRS Chapter 13A, to allow a clearer understanding of the policies by the Green River Correctional Complex employees and inmate population, thereby impacting the safety and security of the institution

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: 242 employees of the Green River Correctional Complex and 912 inmates and all visitors to Green River Correctional Complex.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To ensure a clearer understanding of the policies by employees and inmate population, thereby impacting the security, and safety of the institution and the public.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 2002-2004 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulations applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to these administrative regulations 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 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.

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Section 1. Incorporation by Reference. (1) The following material is incorporated by reference: "Department of Corrections Secured Policies and Procedures, May 15 ~~March 13~~, 2002".

BCC 08-04-02	Immediate Release of Inmates from Locked Areas <del>((Added 1/15/02))</del>	GRCC 09-09-01	Agents (Amended 5/15/02)
BCC 09-04-01	Construction Crew Entry, Exit and Regulations	GRCC 09-10-01	Contraband Control; Collection, Preservation, Disposition of Contraband and Identification of Physical Evidence (Added 5/15/02)
BCC 09-04-02	Complex Entry and Exit <del>((Amended 1/15/02))</del>	GRCC 09-11-01	Emergency Release from Locked Areas (Amended 5/15/02)
BCC 09-05-01	Key Control <del>((Amended 1/15/02))</del>	GRCC 09-12-01	Tool and Equipment Control (Amended 5/15/02)
BCC 09-06-02	Transportation to Courts <del>((Amended 1/15/02))</del>	GRCC 09-15-01	Key Control (Amended 5/15/02)
BCC 09-07-01	Drug Abuse and Intoxicants Testing <del>((Amended 1/15/02))</del>	KSP 08-02-05	Radio Assignment (Added 5/15/02)
BCC 09-08-01	Weapons and Related Security Device Control <del>((Added 1/15/02))</del>	KSP 08-03-01	Storage of Flammables and Dangerous Chemicals and Their Use <del>((Added 1/15/02))</del>
BCC 09-08-02	Use of Restraints <del>((Added 1/15/02))</del>	KSP 08-03-02	Emergency Plans and General Policy <del>((Added 1/15/02))</del>
BCC 09-15-01	Search Policy and Disposition of Contraband <del>((Amended 1/15/02))</del>	KSP 08-03-03	General Procedures and Plans for Riots and Disturbances <del>((Added 1/15/02))</del>
BCC 09-17-01	Institutional Supervisor Inspections <del>((Amended 1/15/02))</del>	KSP 08-03-04	Master Riot Control Plan <del>((Added 1/15/02))</del>
BCC 09-20-01	Inmate Death <del>((Amended 1/15/02))</del>	KSP 08-03-05	Hostage Plans <del>((Added 1/15/02))</del>
BCC 09-21-01	Tool Control <del>((Amended 1/15/02))</del>	KSP 08-03-06	Work Slowdown, Work Stoppage, Work Strikes, by Correctional Employees <del>((Added 1/15/02))</del>
BCC 09-22-01	Emergency Power and Communication System <del>((Amended 1/15/02))</del>	KSP 08-03-08	Escape Procedure <del>((Added 1/15/02))</del>
BCFC 08-01-01	Bell County Forestry Camp's Institutional Emergency Plan	KSP 08-05-01	Bomb Plans <del>((Added 1/15/02))</del>
BCFC 08-09-02	OSHA Hazard Communication Program	KSP 09-01-01	Emergency Squad <del>((Added 1/15/02))</del>
BCFC 08-10-01	Bell County Forestry Camp Emergency Response Team	KSP 09-07-01	Use of Force <del>((Added 1/15/02))</del>
BCFC 09-07-01	Key Control	KSP 09-08-01	Weapons Control <del>((Added 1/15/02))</del>
BCFC 09-11-01	Guidelines for Contractors	KSP 09-09-01	Searches and Preservation of Evidence <del>((Amended 1/15/02))</del>
BCFC 09-15-01	Count Procedure and Regulation of Inmate Movement	KSP 09-10-01	Transportation of Inmates <del>((Added 1/15/02))</del>
BCFC 09-16-01	Inmate Death	KSP 09-10-02	Institutional Security Inspections <del>((Added 1/15/02))</del>
BCFC 09-19-01	Tool Control	KSP 09-11-01	Security Inspection Guidelines for Cellhouse Officers <del>((Added 1/15/02))</del>
BCFC 09-20-01	Weapons, Chemical Agents, and Related Security Device Control	KSP 09-12-01	Tool Control <del>((Added 1/15/02))</del>
BCFC 09-21-01	Transportation of Inmates	KSP 09-13-05	Key Control <del>((Added 1/15/02))</del>
CPP 8.3	Emergency Planning	KSP 09-14-01	Outside Hospital Duty, Inpatient and Outpatient Care for Inmates <del>((Added 1/15/02))</del>
CPP 8.4	Emergency Preparedness (Amended 5/15/02)	KSP 09-15-01	Care for Inmates <del>((Added 1/15/02))</del>
CPP 8.5	Emergency Squads	KSP 09-15-04	Count Procedures <del>((Added 1/15/02))</del>
CPP 9.1	Use of Force (Amended 5/15/02)	KSP 09-24-01	Entry and Exit Procedures <del>((Added 1/15/02))</del>
CPP 9.3	Security Threat Groups	KSR 08-01-01	Institutional Limited Access <del>((Added 1/15/02))</del>
CPP 9.7	Storage, Issue, and Use of Weapons Including Chemical Agents	KSR 08-01-02	Western Kentucky Correctional Complex <del>((Added 1/15/02))</del>
CPP 9.9	Transportation of Inmates	KSR 08-01-03	Control of Flammable, Hazardous, Toxic and Caustic Chemical and Materials
CPP 9.10	Security Inspections	KSR 08-01-04	Corrections Emergency Response Team
CPP 9.11	Tool Control	KSR 09-00-04	Emergency Medical Transportation
FCDC 09-01-02	Institutional Entry and Exit Surveillance and Perimeter Security Procedures	KSR 09-00-09	Escape Response Procedure
FCDC 09-01-03	Firearms, Mechanical Restraints, and Emergency Equipment	KSR 09-00-27	Box 1 Entry and Exit Procedure
FCDC 09-03-01	Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials	KSR 09-01-01	Contraband, Dangerous Contraband and Search Policy
FCDC 09-07-01	Guidelines for Contract and Construction Personnel	KSR 09-01-02	Construction Crew Entry and Exit
FCDC 09-09-01	Tool Control	KSR 09-01-03	Count Procedures
FCDC 09-12-01	Key Control	KSR 09-01-04	Gate 1 Entrance and Exit Procedure
FCDC 09-14-01	Count Procedures	KSR 09-01-05	Tunnel Gate Entrance and Exit Procedure
FCDC 09-20-01	Collection, Preservation, and Identification of Physical Evidence	KSR 09-01-06	Outside Stockade Gate (Box 01)
GRCC 08-03-01	Escape Plan	KSR 09-01-07	Tool Control
GRCC 08-05-01	Emergency Squad: Selection, Training and Evaluation	KSR 09-01-08	Security Inspection Plan
GRCC 08-07-01	Natural Disaster or Earthquake (Amended 5/15/02)	KSR 09-01-09	Key Control
<del>GRCC 09-03-01</del>	<del>Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power (Deleted 5/15/02)</del>	KSR 09-01-10	Issuance of Firearms and Chemical Weapons From Arms Vault
<del>GRCC 09-04-01</del>	<del>Inmate Death (Deleted 5/15/02)</del>	KSR 09-01-11	Officers Daily Housing Security and Safety Log, Security Index, Correctional Security Guide and Post Orders
GRCC 09-05-01	Construction Crew Entry and Exit Guidelines (Amended 5/15/02)	KSR 09-01-12	Issuance of Institutional Portable Radios
GRCC 09-06-01	Entry and Exit Procedures (Amended 5/15/02)	KSR 09-01-13	Transportation of Inmates
GRCC 09-07-01	Institutional Inspections (Amended 5/15/02)	LLCC 08-03-01	Collection, Preservation and Identification of Physical Evidence
GRCC 09-08-01	Issuance of Weapons, Ammunition and Chemical	LLCC 09-01-02	Forced Cell Move in Medium or Maximum Area
			Special Management - Behavior Problem Control
			Emergency Squad: Selection, Training and Evaluation (Added 5/15/02)
			Priority Posts and Emergency Security Posts Assignments for Daily Operation (Amended 5/15/02)
			<del>Emergency Security Posts Coverage (Deleted 5/15/02)</del>

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LLCC 09-06-01	Central Control Center Operating Procedure (Entry Into Institutional Compound) (Amended 5/15/02)	NTC 09-28-01	Personal Firearms Owned by Employees Residing on Institutional Property
<del>LLCC 09-06-02</del>	<del>Central Control Count Documentation (Deleted 5/15/02)</del>	NTC 09-30-01	Security Check-in List Procedures
LLCC 09-07-01	Count Procedure and Documentation (Amended 5/15/02)	RCC 08-03-01	Escape Procedures
<del>LLCC 09-07-02</del>	<del>Count Documentation (Deleted 5/15/02)</del>	RCC 08-08-01	Control and Use of Flammable, Toxic, and Caus- tic Materials
LLCC 09-08-01	Regulation of Inmate Movement (Amended 5/15/02)	RCC 08-09-01	Institutional Emergency Plan
LLCC 09-08-02	Unit Security and Emergency Procedure (Amended 5/15/02)	RCC 09-01-01	Establishment of Security Posts
LLCC 09-09-01	Transportation of Inmates - Entry and Exit Pro- cedures (Amended 5/15/02)	RCC 09-01-02	Mandatory Security Post Coverage <del>((Added 4/15/02))</del>
LLCC 09-09-02	Entry and Exit Control (Amended 5/15/02)	RCC 09-02-01	Security Activity Logs
LLCC 09-11-01	Standards for Maintaining Perimeter Security (Amended 5/15/02)	RCC 09-03-01	Institutional Security Inspections
<del>LLCC 09-11-02</del>	<del>Perimeter Towers and Box #1 (Deleted 5/15/02)</del>	RCC 09-05-01	Entry and Exit to Institution
<del>LLCC 09-11-03</del>	<del>Perimeter Patrol Officer (Deleted 5/15/02)</del>	RCC 09-06-01	Search Policy/Disposition of Contraband
LLCC 09-11-04	Outside Detail (Amended 5/15/02)	RCC 09-06-02	Collection, Preservation, and Identification of Physical Evidence
LLCC 09-12-02	Monitoring Staff and Visitors Movement (Amended 5/15/02) <del>(With the Computer System)</del>	RCC 09-06-04	Disposition of Contraband from Outside Institu- tional Perimeter
LLCC 09-13-01	Outside Hospitals (Amended 5/15/02) <del>(and Uni- versity of Louisville Hospital Security)</del>	RCC 09-07-01	Key Control
LLCC 09-14-01	Security Procedures for Print Shop (Amended 5/15/02)	RCC 09-11-01	Guidelines for Contractors
LLCC 09-15-01	Emergency Redlight Response (Amended 5/15/02)	RCC 09-12-01	Outside Hospital Security
<del>LLCC 09-15-02</del>	<del>Response Units (Deleted 5/15/02)</del>	RCC 09-13-01	Outside Details and Farm Details
<del>LLCC 09-16-02</del>	<del>Escape Plan (Deleted 5/15/02)</del>	RCC 09-14-01	Restricted Areas
LLCC 09-17-01	Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power (Amended 5/15/02)	RCC 09-14-02	Count Documentation
<del>LLCC 09-18-02</del>	<del>Radio transmission Signal 10 Code Listing (De- leted 5/15/02)</del>	RCC 09-15-01	Count Procedure
LLCC 09-18-04	<del>(Procedure for)</del> Monitoring of Inmate Telephone Calls (Amended 5/15/02)	RCC 09-15-02	Security and Records Office Documentation for Placement and Movement of Inmates
LLCC 09-20-01	Weapons and Related Security Device Control (Amended 5/15/02)	RCC 09-15-03	Regulation of Inmate Movement
LLCC 09-20-02	Key Control (Amended 5/15/02)	RCC 09-16-01	Inmate Death
LLCC 09-20-03	Tool and Equipment Control (Added 5/15/02)	RCC 09-17-01	Recreational Area Security and Recreation Field
<del>LLCC 09-20-07</del>	<del>Use of Protector Model #15 (Deleted 5/15/02)</del>	RCC 09-19-01	Tool Control
<del>LLCC 09-21-02</del>	<del>Use of Immobilization Control Unit or Electronic (ICE) Shield, Electronic Belt and Taser Gun (Deleted 5/15/02)</del>	RCC 09-20-01	Weapons and Related Security Device Control
LLCC 09-21-03	<del>(Forced)</del> Cell Entry in a Dorm <del>(Housing Unit)</del> or Special Management Unit (Amended 5/15/02) <del>(SMU)</del>	RCC 09-20-03	Issuance of Firearms and Chemical Weapons from the Armory
LLCC 09-22-01	Application <del>(Use)</del> of Restraints (Amended 5/15/02)	RCC 09-21-01	Transportation of Inmates
LLCC 09-24-01	Weekly Inspection and Maintenance of All Secu- rity Devices (Added 5/15/02)	RCC 09-22-02	Use of Electronic Riot Shield
NTC 08-05-04	Storage of Flammables and Dangerous Chemi- cals and Their Use	RCC 09-23-01	Use of Restraints
NTC 09-01-02	Escape By Air	RCC 09-25-01	Procedure for Operation in Inclement Weather
NTC 09-02-01	Regulation of Inmate Movement	RCC 09-26-01	Use of State Vehicles and Staff Owned Vehicles
NTC 09-04-01	Construction Crew Entry and Exit		(2) There shall not be a public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025(6) which states that these policies shall not be acces- sible to the public or inmates.
NTC 09-05-01	Count Procedure and Documentation		
NTC 09-08-01	Issuance and Use of Institution Portable Radios		
NTC 09-09-01	Transportation of Inmates		
NTC 09-10-01	Use of Force; Prohibiting Personal Abuse and Corporal Punishment		
NTC 09-10-02	Use of Physical Restraints		
NTC 09-11-01	Tool Control		
NTC 09-13-01	Procedure for Operation in the event of Dense Fog and Loss of Power		
NTC 09-17-01	Standards for Maintaining Perimeter Security		
NTC 09-17-02	Perimeter Security Check		
NTC 09-18-01	Key Control		
NTC 09-19-01	Electrical Disabling Devices		
NTC 09-20-01	Security Inspection Plan		
NTC 09-21-01	Inclement weather Operations		
NTC 09-25-01	Weapons and Related Security Device Control		
NTC 09-25-02	Use of Chemical Agents		

VERTNER L. TAYLOR, Commissioner  
APPROVED BY AGENCY: May 9, 2002  
FILED WITH LRC: May 15, 2002 at 8 a.m.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jack Damron, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the secured policies and procedures of the Department of Corrections (Corrections) governing the operation of Corrections, Green River Correctional Complex and the Luther Luckett Correctional Complex, which directs employees in the safe and appropriate control of the inmate population and security of Corrections and the institutions.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the security operations of the Corrections and the institutions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to institutional employ-  
ees as to their duties and responsibilities to insure the safe and secure operation of the institutions.

(2) If this is an amendment to an existing administrative regula-  
tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments shall bring the policies and procedures in compliance with state and federal law, including KRS Chapter

13A, and ACA Standards.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 196.035 and 197.020.

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of Corrections and its divisions and institutions.

(d) How the amendment will assist in the effective administration of the statutes: It will make minor changes to conform to KRS Chapter 13A, to allow a clearer understanding of the policies by institutional employees, thereby impacting the safety and security of the institutions and the public.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To ensure a clearer understanding of the policies by employees, thereby impacting the security and safety of the institutions and the public.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 2002 - 2004 biennium.

(7) Provide an assessment of whether an increase in fees or funding shall be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) 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.

**PUBLIC PROTECTION AND REGULATION CABINET**  
Department of Insurance  
(Amendment)

**806 KAR 13:150. Property and casualty rate and rule filings.**

RELATES TO: KRS 304.13-031, 304.13-051, 304.13-061, 304.13-081

STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010, 304.12-010, 304.12-020, 304.12-160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation provides property and casualty rate and rule filing procedures.

Section 1. Every insurer, other than life or health insurers, required by law or licensed advisory organization, or statistical agent permitted by law to file rates, loss costs, rating plans, rating rules, underwriting rules or guidelines, statistical plans, advertising and sales materials, or other documents shall file with these documents a fully completed and signed Form F-1A P & C, "Face Sheet and Verification Form for Individual Insurers", and if applicable Form F-1G P & C, "Group Member Companies Included in this Filing".

Section 2. All filings shall include two (2) full document sets with three (3) cover letters and a self-addressed stamped envelope.

Section 3. A filing may include any number of documents, filed together on a particular date, pertaining to a single line of insurance. Rates, loss costs and rules shall be filed separately from forms.

Section 4. (1) All rate or loss cost filings shall also be accompanied by Form S-1 P & C, "Filing Synopsis for Rates".

(2) All rate or loss cost filings shall include a separate Form S-1 P & C for each company included in the filing.

Section 5. (1) All rule filings shall be accompanied by Form S-3 P & C, "Filing Synopsis for Rules".

(2) All rule filings shall include a separate Form S-3 P & C for each company included in the filing.

Section 6. (1) All rate filings referencing loss costs formulated by any advisory organization shall be accompanied by Form LC-1 P & C, "Calculation of Loss Cost Multiplier". All rate filings referencing loss costs formulated by an advisory organization in which an expense constant is used shall be accompanied by Form LC-2 P & C, "Expense Constant Supplement".

(2) All rate filings to which this section applies shall include separate Forms LC-1 P & C and LC-2 P & C for each company included in the filing.

Section 7. (1) Any rate filing, or any filing containing a rule, or underwriting rule or guideline that impacts a rate or rates submitted by an insurer, or insurance group, regarding personal automobile insurance shall be accompanied by ~~three (3) copies of a completed~~ Form SG-1 P & C, "Shopper's Guide Rate Comparison for Auto Insurance" which shall be submitted on-line via the Department of Insurance website whenever any rate or rule change impacts the premium information reported on form SG-1 P & C. If there is no impact to premium information previously filed on Form SG-1 P & C on-line, an explanatory statement shall be included in the cover letter.

(2) Any rate filing, or any filing containing a rule, or underwriting rule or guideline that impacts a rate or rates submitted by an insurer, or insurance group regarding homeowners' insurance shall be accompanied by ~~three (3) copies of a completed~~ Form SG-2 P & C, "Shopper's Guide Rate Comparison for Homeowners' Insurance" which shall be submitted on-line via the Department of Insurance website whenever any rate or rule change impacts the premium information reported on Form SG-2 P & C. If there is no impact to premium information previously filed on Form SG-2 P & C on-line, an explanatory statement shall be included in the cover letter.

(3) All filings to which this section applies shall include a separate Form SG-1 P & C or SG-2 P & C for each company included in the filing.

Section 8. A property and casualty rate or rule filing may include rates for a particular insurance company, or group of insurance companies if the material is identical to all companies. If the filing is made for a group of insurance companies, Form F-1G P & C shall be filed to identify all member companies of the group that are to be included in the filing.

Section 9. Filing fees shall be paid on a per company basis. Since by the provisions of KRS 304.4-010 all fees and charges payable under the insurance code are required to be collected in advance, the period of time in which the commissioner may affirmatively approve or disapprove the filing shall not begin to run until both the complete filing and appropriate fee are received by the department.

Section 10. (1) Insurers that are members, subscribers or service purchasers of an advisory organization or statistical agent may choose to adopt all or some of the loss costs, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans of that advisory organization or statistical agent.

(2) When an insurer chooses to adopt only a specific filing of an advisory organization or statistical agent, it shall do so in accordance with the procedures set forth in this administrative regulation, and shall clearly identify which filing of the advisory organization or

statistical agent it is adopting.

(3)(a) When an insurer chooses to adopt all of the current and future loss costs, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans of an advisory organization or statistical agent, it may:

1. Provide written authorization to the advisory organization or statistical agent to notify the commissioner that the insurance company shall adopt all of the loss costs, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans that the advisory organization or statistical agent files on its behalf; or

2. File written notice with the commissioner that the insurer is adopting by reference all of the current and future loss costs, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans that the advisory organization or statistical agent files.

(b) If required by law to file its rates an insurer may file a loss cost multiplier, in accordance with the provisions of this administrative regulation, to adopt the prospective loss costs filed by an advisory organization. The insurer may apply its loss cost multiplier to a specific loss cost filing, or may elect to have its multiplier apply to all future loss costs filed by the advisory organization.

(c) The advisory organization or statistical agent shall file the written notice of authorization referred to in paragraphs (a) and (b) of this subsection with the commissioner and shall pay the appropriate fee. The fee shall be paid for each company sending a written authorization and on the basis of each line of insurance.

(d)1. When an insurer that previously authorized an advisory organization or statistical agent to file loss costs, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans on its behalf chooses to not adopt certain loss costs, rating plans, rating rules, rating schedules, other supplementary rating information, underwriting rules or guidelines, or statistical plans as filed on its behalf by the advisory organization or statistical agent, or changes its loss cost multiplier, the insurer shall file a notice of the nonadoption or change of its loss cost multiplier with the commissioner and shall pay the appropriate filing fee.

2.a. If an insurer chooses to delay the effective date of its adoption of an advisory organization or statistical agent filing, it shall submit a letter requesting the revised date upon which it will adopt the filing.

b. The delayed adoption date shall be within six (6) months of the original effective date.

c. If additional time is needed, a second letter shall be submitted, requesting a revised delayed adoption date.

d. All revised delayed adoption dates shall be within one (1) year of the original effective date as filed by the advisory organization or statistical agent.

3. If an insurer fails to adopt the advisory organization or statistical agent filing within one (1) year of the original effective date as filed by the advisory organization or statistical agent, the insurer shall submit a filing indicating it is not adopting.

Section 11. Property and casualty insurance companies, advisory organizations and statistical agents may file their prospective loss costs or rates in an electronic format established by the National Association of Insurance Commissioners, in the manner prescribed by that format. Any electronic filing shall be in lieu of any physical filing.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form F-1A P & C, "Face Sheet and Verification Form for Individual Insurers", June, 2000 edition, Department of Insurance.

(b) Form F-1G P & C, "Group Member Companies Included in this Filing", May, 2000 edition, Department of Insurance.

(c) Form S-1 P & C, "Filing Synopsis for Rates", January, 1999 edition, Department of Insurance.

(d) Form S-3 P & C, "Filing Synopsis for Rules", January, 1999 edition, Department of Insurance.

(e) Form LC-1 P & C, "Calculation of Loss Cost Multiplier", August, 2000 edition, Department of Insurance.

(f) Form LC-2 P & C, "Expense Constant Supplement", August, 2000 edition, Department of Insurance.

(g) Form SG-1 P & C, "Shopper's Guide Rate Comparison for Personal Auto Insurance", May 1, 2002 [July, 1999] edition, Department of Insurance.

(h) Form SG-2 P & C, "Shopper's Guide Rate Comparison for Homeowners' Insurance", May 1, 2002 [July, 1999] edition, Department of Insurance.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, from the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department's Internet web site [at: [www.doi.state.ky.us](http://www.doi.state.ky.us)].

JANIE A. MILLER, Commissioner, Secretary

APPROVED BY AGENCY: May 14, 2002

FILED WITH LRC: May 15, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 24, 2002, at 10 a.m. at the Kentucky Department of Insurance Hearing Room, 215 West Main Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by June 17, 2002, 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: Vicky Horn or Melea Kelch, Kentucky Department of Insurance, PO Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6032, fax (502) 564-1456.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melea Kelch, Vicky C. Horn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends forms SG-1 P & C "Shopper's Guide Rate Comparison for Personal Auto Insurance" and SG-2 P & C "Shopper's Rate Guide Comparison for Homeowner's Insurance" to allow the department to get updated information for its shopper's guide publications. This amendment will also allow this information to be filed electronically on line at the department's website.

(b) The necessity of this administrative regulation: In order to give the consumer's adequate information to make the rate comparisons meaningful in the department's shopper's guide publications, new information is required.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides property and casualty rate and rule filing procedures, which includes data for the shopper's guides.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently assists the industry and the department in complying with the statutory necessity of form and rate filing in a uniform efficient manner. This amendment should cut costs for industry because two of the forms will be allowed to be filed electronically, thus saving postage and paper costs. This will also reduce costs at the department.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment is designed to assist industry in supplying the department with current information to update the "Shopper's Guides to Personal Auto Insurance and Homeowner's Insurance". For the first time, industry will be able to file these forms directly on line.

(b) The necessity of the amendment to this administrative regulation: These forms have not been updated since 1999, so the in-

formation is obsolete. Also, the new examples will provide a better guide to the shopper because they are more uniform.

(c) How the amendment conforms to the content of the authorizing statute: This amendment will aid the consumer in making informed choices when purchasing personal auto or homeowner's insurance.

(d) How the amendment will assist in the effective administration of the statute: Publication of the shopper's guides is meaningless without relevant data. These forms need to be updated for the sake of consistency and uniformity as well as to collect more pertinent current data so that published rate information will be accurate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All property and casualty insurers selling personal auto or homeowner's insurance in the Commonwealth. All consumers who consult the department's shopper's guides.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Consumers should be able to make a better more informed choice when purchasing policies; carriers will have an opportunity to more accurately reflect their current rates in today's marketplace. Carriers will further benefit by saving paper and postage costs when filing online. department costs will be significantly reduced by electronic filing of documents.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The cost will be so minimal to the department as to be unappreciable, as these guides are funded by an assessment of property and casualty carriers. The assessment should be less for the new guides as they will also be published online, lessening the number of hard copy guides that will need to be published.

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: An assessment of the property and casualty carriers. This assessment is expected to be lower than in the past due to the online publication of the guides. This is expected to lower the demand for hard copy publications.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees are contemplated at this time.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation applies uniformly to the target audience.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Long Term Care and Disability Services**  
**(Amendment)**

**907 KAR 1:025. Payment for services provided by an intermediate care facility for the mentally retarded and developmentally disabled, a dually-licensed pediatric facility, an institution for mental diseases, a nursing facility with an all-inclusive rate unit, and a hospital with federally defined swing beds.**

RELATES TO: 42 CFR Parts 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for nursing care facility services provided by an intermediate care facility for the

mentally retarded and developmentally disabled, a dually-licensed pediatric facility, an institution for mental diseases, and a nursing facility with an all-inclusive rate unit, and a hospital with federally defined swing beds.

Section 1. Definitions. (1) "All other costs" means:

- (a) Other care-related costs;
- (b) Other operating costs;
- (c) Capital costs; and
- (d) Indirect ancillary costs.

(2) "Allowable cost" means that portion of the facility's cost which may be allowed by the department in establishing the reimbursement rate.

(3) ~~"Ancillary service" means a direct service for which a charge is customarily billed separately from the per diem rate and shall include:~~

- ~~(a) Ancillary services pursuant to 907 KAR 1:023;~~
- ~~(b) Laboratory procedures and x-rays if ordered by a:~~
  - ~~1. Physician;~~
  - ~~2. An advanced registered nurse practitioner (ARNP), if the laboratory test or x-ray is within the scope of the ARNP's practice; or~~
  - ~~3. Physician assistant, if:~~
    - ~~a. Authorized by the supervising physician; and~~
    - ~~b. The laboratory test or x-ray is within the scope of the physician assistant's practice; and~~
- ~~(c) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded and developmentally disabled only).~~

(4) "Basic per diem cost" means that for each major cost category (nursing services costs and all other costs), there shall be the calculated rate arrived at after otherwise allowable costs are trended and adjusted in accordance with the:

- (a) DRI inflation factor; and
- (b) Occupancy factor.

(4) [(5)] "Calculated rate" means the rate effective July 1, 1999 and each July 1 thereafter for:

(a) An intermediate care facility for the mentally retarded and developmentally disabled; or

- (b) A nursing facility certified as:
  - 1. A dually-licensed pediatric facility; or
  - 2. An institution for mental diseases (IMD).

(5) [(6)] "Cost-based facility" means a facility which:

- (a) The department shall reimburse for all allowable costs; and
- (b) Is either:

- 1. A dually-licensed pediatric facility;
- 2. An intermediate care facility for the mentally retarded and developmentally disabled; or
- 3. An institution for mental diseases (IMD).

(6) [(7)] "Department" means the Department for Medicaid Services or its designee.

(7) [(8)] "DRI" means an indication of changes in health care costs from year to year developed by Data Resources Incorporated.

[(9)] "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields a total projected current year allowable cost.

(8) "ICR-MR [(40) "ICF-MRs]" means an intermediate care facility [facilities] for the mentally retarded and developmentally disabled.

(9) [(44)] "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(10) [(42)] "Necessary function" means that had the owner not rendered a service [services] pertinent to the operation of the institution, the institution would have had to employ another person to perform the service.

(11) [(43)] "Nursing facility" or "NF" means that:

- (a) The state survey agency has:
  - 1. Granted an NF license to a facility; and
  - 2. Recommended the NF to the department for certification as a Medicaid provider; and
- (b) The department has granted certification for Medicaid participation to the NF.



(12) [(14)] "Nursing services costs" means the direct costs associated with nursing services.

(13) [(15)] "Occupancy factor" means a percentage representing:

- (a) A facility's actual occupancy level; or
- (b) A minimum occupancy level assigned to a facility if its occupancy level is below an established minimum level. ~~the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.~~

(14) [(16)] "Prospective rate" means a payment rate ~~of return~~ for routine services based on allowable costs and other factors which, except as specified in Section 4(14) of this administrative regulation, shall not be retroactively adjusted, either in favor of the facility or the department.

(15) [(17)] "Routine services" means services covered by the Medicaid Program pursuant to 42 CFR 483.10(c)(8)(i).

(16) [(18)] "State survey agency" means the Cabinet for Health Services, Office of Inspector General, Division of Long-Term Care ~~Licensing and Regulation~~.

Section 2. Certified Bed Requirements. Except for an intermediate care facility for the mentally retarded and developmentally disabled, a cost-based facility desiring to participate in the Medicaid Program shall comply with the following requirements:

(1) If a cost-based facility has less than ten (10) beds, all of its beds shall participate in the Medicare Program; and

(2) If a cost-based facility has ten (10) or more beds, it shall be required to have the greater of:

(a) Ten (10) of its Medicaid-certified beds participating in the Medicare Program; or

(b) Twenty (20) percent of its Medicaid-certified beds participating in the Medicare Program. ~~(Reimbursement for a Cost-based Facility. (1) Except as provided in subsection (2) of this section, a cost-based facility desiring to participate in Medicaid shall be required to have the greater of:~~

~~(a) Ten (10) of its Medicaid-certified beds participating in the Medicare Program; or~~

~~(b) Twenty (20) percent of its Medicaid-certified beds participating in the Medicare Program.~~

~~(2) If a cost-based facility has less than ten (10) beds, all of its beds shall participate in the Medicare Program.]~~

Section 3. ~~[Public Notice of Payment Rates for a Cost-based Facility. The department shall notify the public of the proposed rates of payment in accordance with the requirements established in 42 USC 1396a(a)(13)(A).~~

Section 4. Implementation of the Payment System for a Cost-based Facility. The department's reimbursement system shall include the following specific policies, components or principles:

(1)(a) Prospective payment rates for routine services shall be set by the department on a facility-specific ~~by facility~~ basis, and shall not be subject to retroactive adjustment except as specified in this section of this administrative regulation;

(b) Prospective rates shall be determined on a cost basis ~~cost based~~ annually, and may be revised on an interim basis by the department;

(c) An adjustment to a prospective rate (subject to the maximum payment for that type of facility) shall be considered if:

1. The facility's increased costs are attributable to:

a. A governmentally imposed minimum wage increase or a staffing ratio increase; and

b. The increase was not included in the DRI; or

2. A new licensure requirement or new interpretation of an existing requirement by the appropriate governmental agency as issued in an administrative regulation results in changes that affect all facilities within the class; and

(d)1. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into the following two (2) general areas:

a. Salaries; and

b. Other; and

2. The effective date of an interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The state shall set a uniform rate year for a cost-based facility ~~facilities~~ (July 1 - June 30) by taking the latest available cost data ~~which are~~ available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report data has not been audited or desk-reviewed prior to rate setting for the universal year beginning July 1, a prospective rate ~~the prospective rates~~ based on a cost report which has not been ~~cost reports which are not~~ audited or desk-reviewed shall be subject to adjustment when the audit or desk review is completed;

(b) Partial year, or budgeted cost data shall be used if a full year's data is unavailable. Unaudited reports shall be subject to an adjustment to the audited amount; and

(c) Other factors relating to costs shall be:

1. If the department has made a separate rate adjustment as compensation to a facility for a ~~the facilities for~~ minimum wage update ~~updates~~, the department shall:

a. Not pay the facility ~~facilities~~ twice for the same costs; and

b. Adjust downward the trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment;

2. If the trending and indexing factors include costs related to a minimum wage increase:

a. The department shall not make a separate rate adjustment; and

b. The minimum wage costs shall not be deleted from the trending and indexing factors;

3. The maximum payment amounts for the prospective universal rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year; and

4. For purposes of administrative ease in computations, normal rounding shall be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents.

(3) ~~The reasonable direct cost of ancillary services provided by a facility as a part of total care shall be reimbursed on a cost basis as an addition to the prospective rate except for a ventilator and a brain injury unit which shall be paid on the basis of all inclusive rates.~~

~~(a) Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement.~~

~~(b) Ancillary costs may be subject to maximum allowable cost limits pursuant to 42 CFR 413.106.~~

~~(c) A percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except:~~

~~1. In the instance of an individual facility where the actual retroactive adjustment for the facility for the previous year reveals an overpayment by the department exceeding twenty-five (25) percent of billed charges; or~~

~~2. If an evaluation by the department of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.~~

(4)(a) Except as provided in paragraph (b) of this subsection, interest expense used in setting a prospective rate shall be an allowable cost if permitted pursuant to 42 CFR 413.153 and if the interest expense:

1. Represents interest on:

a. Long term debt existing at the time the provider enters the program; or

b. New long-term debt, if the proceeds are used to purchase fixed assets relating to the provision of the appropriate level of care.

(i) If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable; and

(ii) The form of indebtedness may include mortgages, bonds, notes, and debentures if the principal is to be repaid over a period in excess of one (1) year; or

2. Is for working capital and operating needs that directly relate to providing patient care. The form of indebtedness may include notes, advances and various types of receivable financing.

(b) Interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

~~(4) [(5)] Each July the department shall notify a provider (except for an administrator of an intermediate care facility for the mentally retarded and developmentally disabled, a dually licensed pediatric facility or an IMD) of the provider's reimbursement rate and compensation upper limits for an administrator or an owner who is an administrator. The compensation shall:~~

~~(a) Be for a service necessary for the efficient and effective operation of a facility;~~

~~(b) Include the total benefit received by the owner who is an administrator for the services he renders to the institution, excluding fringe benefits routinely provided to all employees;~~

~~(c) Not be paid for services requiring a licensed or certified professional performed on an intermittent basis; and~~

~~(d) Be based on total licensed beds.~~

~~(6)] The allowable cost for a service or good [services or goods] purchased by a [the] facility from a related organization shall be the cost to the related organization, unless it can be demonstrated that the related organization is equivalent to a second party supplier.~~

(a) Except as provided in paragraph (b) of this subsection, an organization shall be considered a related organization if an individual possesses five (5) percent or more of ownership or equity in the facility and the supplying business.

(b) An organization shall not be considered a related organization if fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

~~(5) [(7)]~~(a) Except as provided in paragraph (b) of this subsection, the amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs.

(b) The department shall determine the allowable costs of an arrangement based on the costs of the original lease agreement if:

1. A cost-based facility entered into a lease arrangement as an intermediate care facility prior to April 22, 1976;

2. An intermediate care facility for the mentally retarded and developmentally disabled entered into a lease arrangement prior to February 23, 1977; or

3. A nursing facility entered into a lease arrangement as a skilled nursing facility prior to December 1, 1979.

~~(6) [(8)]~~ A cost shall be allowable and eligible for reimbursement if the cost is:

(a) Reflective of the provider's actual expenses of providing a service; and

(b) Related to Medicaid patient care pursuant to 42 CFR 413.9.

~~(7) [(9)]~~ The following costs shall be allowable:

(a) Costs to related organizations pursuant to 42 CFR 413.17;

(b) Costs of educational activities pursuant to 42 CFR 413.85;

(c) Research costs pursuant to 42 CFR 413.90;

(d) Value of services of nonpaid workers pursuant to 42 CFR 413.94;

(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 CFR 413.98;

(f) Depreciation on buildings and equipment if a cost is:

1. Identifiable and recorded in the provider's accounting records;

2. Based on historical cost of the asset or, if donated, the fair market value; or

3. Prorated over the estimated useful life of the asset using the straight-line method;

(g) Interest on current and capital indebtedness; or

(h) Professional costs of services of full-time or regular part-time employees not to exceed what a prudent buyer would pay for comparable services.

~~(8) [(10)]~~ The following shall not be allowable costs:

(a) The value of services provided by nonpaid members of an organization if there is an agreement with the provider to furnish the services at no cost;

(b) Political contributions;

(c) Legal fees for unsuccessful lawsuits against the Cabinet for

Health Services;

(d) Travel and associated costs outside the Commonwealth of Kentucky to conventions, meetings, assemblies, conferences or any related activities that are not related to NF training or educational purposes; or

(e) Costs related to lobbying.

~~(9) [(11)]~~ To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility;

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis;

(c) Gain shall be defined as any amount in excess of a seller's depreciated basis as computed under program policies at the time of a sale, excluding the value of goodwill included in the purchase price;

(d) A sale shall be any bona fide transfer of legal ownership from an owner to a new owner for reasonable compensation, which shall usually be fair market value. A lease purchase agreement or other similar arrangement which does not result in a transfer of legal ownership from the original owner to the new owner shall not be considered a sale until legal ownership of the property is transferred; and

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined pursuant to paragraphs (a) through (d) of this subsection.

~~(10) [(12)]~~ Valuation of capital assets.

(a) An increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984 and before October 1, 1985.

(b) For bona fide changes of ownership entered into on or after October 1, 1985, the depreciation and interest costs shall be increased in valuation in accordance with 42 USC 1395x(v)(1)(O)(i).

~~(11) [(13)]~~(a) A facility shall maintain and make available any records and data necessary to justify and document:

1. Costs to the facility; and

2. Services performed by the facility; and

(b) The department shall have unlimited on-site access to all of a facility's fiscal and service records for the purpose of:

1. Accounting;

2. Auditing;

3. Medical review;

4. Utilization control; and

5. Program planning.

~~(12) [(14)]~~ The following shall apply [with regard] to an [the] annual cost report [required of the facility]:

(a) A [The] year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts;

(b) A new item or expansion representing a departure from current service levels for which the facility requests prior approval by the department shall be so indicated with a description and rationale as a supplement to the cost report;

(c) Department approval or rejection of a projection or expansion shall be made on a prospective basis in the context that if an expansion and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of an item or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) If a request for prior approval of a projection or expansion is made, absence of a response by the department shall not be construed as approval of the item or expansion.

~~(13) [(15)]~~(a) The department shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of an audit in relation to routine and ancillary service cost;

(b) If a field audit is not determined to be necessary, the cost report shall be settled without an audit;

(c) A desk review or field audit shall be used for purposes of

verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; and

(d) Audits may be conducted annually or at less frequent intervals.

(14) ~~[(46)]~~ A year-end adjustment of the prospective rate and a retroactive cost settlement shall be made if:

(a) An incorrect payment has been made due to a computational error (other than an omission of cost data) discovered in the cost basis or establishment of the prospective rate;

(b) An incorrect payment has been made due to a misrepresentation on the part of the facility (whether intentional or unintentional);

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser; or

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) ~~[(47)]~~ A facility shall provide the services mandated in 42 CFR 483.10(c)(8)(i).

(16) ~~[(48)]~~ A facility shall submit to the department the data required for determining the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility with the department's concurrence.

(17) ~~[(49)]~~ Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy factor ~~[rate]~~.

(a) The occupancy factor ~~[rate]~~ shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) Except for a state-owned facility, the minimum occupancy factor ~~[rate]~~ shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy.

(c) The minimum occupancy factor for a state-owned facility shall be seventy-five (75) percent of certified bed days.

(d) The department may impose a lower occupancy factor ~~[rate]~~ for a newly constructed or newly participating facility, or for an existing facility suffering a patient census decline as a result of a newly constructed or opened competing facility serving the same area.

(e) ~~[(44)]~~ The department may impose a lower occupancy factor ~~[rate]~~ during the first two (2) full fiscal years an existing cost-based facility participates in the program under this payment system.

(18) A ~~[(20)]~~ provider tax on cost-based facilities shall be considered an allowable cost.

Section 4. ~~[(5)]~~ Prospective Rate Computation for a Cost-based Facility. The prospective rate for a cost-based facility shall reflect the following:

- (1) The adjusted allowable cost for the facility; and
- (2) Occupancy factor ~~[limits]~~.

Section 5. Ancillary Services. (1) Except for an intermediate care facility for the mentally retarded and developmentally disabled, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

- (a) Ancillary services pursuant to 907 KAR 1:023; and
- (b) Laboratory procedures and x-rays if ordered by a:
  1. Physician;
  2. An advanced registered nurse practitioner (ARNP) if the laboratory test or x-ray is within the scope of the ARNP's practice; or
  3. Physician assistant if:
    - a. Authorized by the supervising physician; and
    - b. The laboratory test or x-ray is within the scope of the physician assistant's practice.

(2) For an intermediate care facility for the mentally retarded or developmentally disabled, an ancillary service shall be a direct service for which a charge is customarily billed separately from a per diem rate including:

- (a) Ancillary services identified in 907 KAR 1:023;

(b) Laboratory procedures and x-rays if ordered by a:

1. Physician;
2. An ARNP if the laboratory test or x-ray is within the scope of the ARNP's practice; or
3. Physician assistant if:
  - a. Authorized by the supervising physician; and
  - b. The laboratory test or x-ray is within the scope of the physician assistant's practice; and
  - c. Psychological and psychiatric therapy.

(3) Ancillary service.

(a) Reimbursement shall be subject to a year-end audit, retroactive adjustment, and final settlement; and

(b) Costs may be subject to allowable cost limits pursuant to 42 CFR 413.106.

(4) The department shall utilize an NF's prior year cost-to-charge ratio, based on the prior year's cost report as of May 31, as the percentage to be used for interim reimbursement purposes for the following year. For example if an NF's cost-to-charge ratio for SFY 2001 is seventy-five (75) percent, the department shall reimburse the NF, on an interim basis, seventy-five (75) percent of billed charges for SFY 2002.

(5) An NF without a prior year cost report may submit to the department a percentage to be used for interim reimbursement purposes.

(6) If an NF has been reimbursed at an interim percentage above its allowable cost-to-charge ratio for a given year, the department shall decrease the interim percentage for the following year by no more than twenty-five (25) percentage points unless:

(a) A retroactive adjustment of an NF's reimbursement for the prior year reveals an overpayment by the department exceeding twenty-five (25) percent of billed charges; or

(b) If an evaluation of an NF's current billed charges indicates that the NF's charges exceed, by greater than twenty-five (25) percent, average billed charges for other comparable facilities serving the same area.

Section 6. Reimbursement for a Nursing Facility With a Distinct Part Ventilator Unit. (1) A nursing facility recognized as providing distinct part ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate for services provided in the distinct part ventilator unit.

(2) A distinct part ventilator unit shall:

- (a) Have a minimum of twenty (20) beds;
- (b) Maintain a census of fifteen (15) patients; and
- (c) Base the patient census upon:

1. The quarter preceding the beginning of the rate year; or
2. The quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator care unit at the beginning of the rate year.

3. The fixed rate for hospital-based facilities shall be \$538.98 ~~[(460)]~~ per day.

4. The fixed rate for freestanding facilities shall be \$292.92 ~~[(250)]~~ per day.

(3) ~~[(45)]~~ The rates shall be increased or decreased based on the Data Resource Incorporated rate of inflation indicator for the nursing facility services for each rate year beginning with the July 1, 2002 ~~[(4997)]~~ rate year.

(4) ~~[(46)]~~ Costs of distinct part ventilator nursing facility units shall be excluded from allowable costs for purposes of rate setting and settlement of cost-based nursing facility cost reports.

Section 7. Reimbursement for a Nursing Facility with a Brain Injury Unit. (1) In order to participate in the Medicaid Program as a brain injury provider, a nursing facility with a distinct part brain injury unit shall:

- (a) ~~[(Be Medicare and Medicaid certified;)]~~
- (b) ~~[(b)]~~ Designate as a brain injury unit at least ten (10) certified beds that are physically contiguous and identifiable;
- (b) ~~[(c)]~~ Be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) after the first year of participation; and

(c) ~~[(44)]~~ Establish written policies regarding administration and operations, the facility's governing authority, quality assurance, and

program evaluation.

(2) Except as provided in subsection (3) of this section, a nursing facility with a Medicaid certified brain injury unit providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem for services provided in the brain injury unit.

(3) A facility providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs) negotiated rate which shall not exceed the facility's usual and customary charges.

Section 8. Appeal Rights. A participating facility [Reimbursement for a Hospital With Federally-defined Swing Beds. The reimbursement rate for a federally-defined hospital swing bed shall be:

(1) The average rate per patient day paid to freestanding price-based nursing facilities for routine services furnished during the preceding calendar year; and

(2) Established effective January 1 of each year.

Section 9. Reimbursement Review and Appeal. Participating facilities may appeal department decisions as to the application of this administrative regulation as it impacts the facility's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9. [40.] Reimbursement for Required Services Under the Preadmission Screening Resident Review (PASRR) for a Nursing Facility With a Ventilator Unit, a Nursing Facility With a Brain Injury Unit, an IMD, and a Dually-licensed Pediatric Facility. (1) Prior to an admission of an individual, a facility shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse a facility for a service delivered to an individual if the facility complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 may be grounds for termination of a [the] facility's participation in the Medicaid Program.

Section 10. [44.] Reimbursement Provisions. (1) Each of the following types of facilities participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation:

- (a) A nursing facility with a certified brain injury unit;
- (b) A nursing facility with a distinct part ventilator unit;
- (c) [A hospital with federally-defined swing beds;
- (d)] A nursing facility designated as an institution for mental diseases;
- (d) [(e)] A dually-licensed pediatric facility; or
- (e) [(f)] An intermediate care facility for the mentally retarded and developmentally disabled.

(2) A payment made to a facility governed by this administrative regulation shall:

- (a) Be made in accordance with the requirements established in 907 KAR 1:022; and
- (b) Be subject to the limits established in 42 CFR 447.272.

Section 11. Supplemental Payments to Dually-licensed Pediatric Facilities. (1) Beginning July 1, 2002 and annually thereafter the department shall establish a pool of \$550,000 to be distributed to facilities qualifying for supplemental payments in accordance with subsection (2) of this section.

(2) Based upon its pro rata share of Medicaid patient days compared to total patient days of all qualifying facilities, a dually-licensed pediatric facility shall qualify for a supplemental payment if it:

- (a) Is located within the Commonwealth of Kentucky;
- (b) Has a Medicaid occupancy rate at or above eighty-five (85) percent;
- (c) Only provides services to children under age twenty-one (21); and
- (d) Has forty (40) or more licensed beds.

(3) A supplemental payment to a facility meeting the criteria established in subsection (2) of this section shall:

- (a) Apply to services provided on or after July 1, 2002;
- (b) Be made on a quarterly basis; and

(c) Not be subject to the cost settlement provisions established in Section 4 of this administrative regulation. [Payment shall be made in accordance with the requirements established in 907 KAR 1:022.]

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Cost-based Facility Reimbursement Cost Report Instructions", April 2000 Edition;
- (b) "Cost-based Facility Reimbursement Cost Report", April 2000 Edition; and
- (c) MAP-703, "Request for Reconsideration Ancillary Therapy Billing", April 2000 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: May 10, 2002

FILED WITH LRC: May 13, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 2002, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2002, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Stuart Owen (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Department for Medicaid Services (DMS) reimbursement for services provided by an intermediate care facility for the mentally retarded and developmentally disabled, a dually-licensed pediatric facility, an institution for mental diseases, a nursing facility with an all-inclusive rate unit.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide for DMS reimbursement for services provided by an intermediate care facility for the mentally retarded and developmentally disabled, a dually-licensed pediatric facility, an institution for mental diseases, a nursing facility with an all-inclusive rate unit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing DMS reimbursement for services provided by an intermediate care facility for the mentally retarded and developmentally disabled, a dually-licensed pediatric facility, an institution for mental diseases, a nursing facility with an all-inclusive rate unit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of statutes by establishing DMS reimbursement for services provided by an intermediate care facility for the mentally retarded and developmentally disabled, a dually-licensed pediatric facility, an institution for mental diseases, a nursing facility with an all-inclusive rate unit.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative

regulation: The amendments to this administrative regulation will establish provision for supplemental payments to qualifying dually-licensed pediatric facilities; will reduce the minimum occupancy factor for state-owned facilities, will enhance access to nursing facility services; and will ensure the continued operation of the Medicaid Program.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary in order to provide for supplemental payments to qualifying dually-licensed pediatric facilities; to reduce the minimum occupancy factor for state-owned facilities, to enhance access to nursing facility services; and to ensure the continued operation of the Medicaid Program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to this administrative regulation conform to the content of the authorizing statutes by providing for supplemental payments to qualifying dually-licensed pediatric facilities; by reducing the minimum occupancy factor for state-owned facilities, by enhancing access to nursing facility services; and by ensuring the continued operation of the Medicaid Program.

(d) How the amendment will assist in the effective administration of the statutes: The amendments to this administrative regulation will assist in the effective administration of the statutes by providing for supplemental payments to qualifying dually-licensed pediatric facilities; by reducing the minimum occupancy factor for state-owned facilities; by enhancing access to nursing facility services; and by ensuring the continued operation of the Medicaid Program.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are approximately 21 providers governed by 907 KAR 1:025 currently participating in the Medicaid Program. As a result of the amendments to this administrative regulation, a provider meeting the qualifications to receive a supplemental payment will receive a supplemental payment, subject to the availability of funds; access to nursing facility services will be enhanced; and the amendment to this administrative regulation will ensure the continued operation of the Medicaid Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: As a result of the amendments to this administrative regulation, a provider qualifying for a supplemental payment will receive a supplemental payment, subject to the availability of funds; access to nursing facility services will be enhanced; and the amendment to this administrative regulation will ensure the continued operation of the Medicaid Program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Implementing the amendment to this administrative regulation regarding supplemental payments to dually-licensed pediatric facilities is expected to increase expenditures by approximately \$550,000 annually; however, expenditures will be more than offset by funds received from another state source which in turn will generate additional federal funds. Implementing the amendment to this administrative regulation regarding the minimum occupancy factor is expected to increase expenditures by \$585,000 for state fiscal year (SFY) 2002 and \$1.1 million for SFY 2003; however, current state expenditures will be reduced by maximizing federal funding.

(b) On a continuing basis: Implementing the amendment to this administrative regulation regarding supplemental payments to dually-licensed pediatric facilities is expected to increase expenditures by approximately \$550,000 annually; however, expenditures will be more than offset by funds received from another state source which will in turn generate additional federal funds. Implementing the amendment to this administrative regulation regarding the minimum occupancy factor is expected to increase expenditures by \$585,000 for state fiscal year (SFY) 2002 and \$1.1 million for SFY 2003; however, current state expenditures will be reduced by maximizing federal funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds shall be used to implement the

amendment to this administrative regulation; however, expenditures will be more than offset by funds received from another state source which will in turn generate additional federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in funding will be necessary to implement the amendments to this administrative regulation; however, expenditures will be more than offset by funds received from another state source which will in turn generate additional federal funds.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor directly or indirectly increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq.

2. State compliance standards. This administrative regulation establishes qualifying criteria for a facility to receive supplemental payments.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards related to a federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

#### CABINET FOR HEALTH SERVICES Department For Medicaid Services Division of Managed Care (Amendment)

#### 907 KAR 1:320. Kentucky Patient Access and Care System (KenPAC).

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 42 USC 1396a, b, d, u-2, 2000 Ky. Acts ch. 549, part I.A.41 [194.050, 42 USC 1396a, b, d, u, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. ~~[Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.]~~ KRS 205.520(3) authorizes ~~[empowers]~~ the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes ~~[sets forth]~~ the terms and conditions under which the Department for Medicaid Services shall administer the Kentucky Patient Access and Care (KenPAC) System ~~[provide Medicaid pursuant to a waiver granted by the Secretary, United States Department of Health and Human Services providing for a physician primary care case management system].~~



Section 1. Definitions. (1) "Advanced registered nurse practitioner" or "ARNP" is defined in KRS 314.011(7).

(2) "AFDC-related" means a recipient who meets the requirements in effect on July 16, 1996 for Aid to Families with Dependent Children (AFDC) related Medicaid, including a specified relative and second parent.

(3) "Complex and extensive medical care needs" means a recipient has either:

- (a) 1. An acute catastrophic illness or injury; or
2. Severe chronic multiple physical or psychological illnesses;

and

(b) Requires complex coordination of medical and mental health care needs by multiple providers on an ongoing basis to maintain physical and psychological stability as determined in accordance with Section 4(3) of this administrative regulation.

(4) "Department" means the Department for Medicaid Services or its designated agent.

(5) "Emergency care" means covered inpatient and outpatient services furnished by a qualified provider that are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; and emergency ambulance transport.

(6) "Emergency medical condition" means a medical condition that manifests itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(7) "EPSDT" means the early and periodic, screening, diagnosis and treatment services provided to Medicaid-eligible children under Title XIX of the Social Security Act, 42 USC 1396, et seq.

(8) "Family-related" means a specified relative, second parent, or child under the age of eighteen (18) years, or a child age eighteen (18) years and in full-time attendance in high school or equivalent level of vocational or technical school who will complete a course of study before the 19th birthday, and who, except for income or resources, would be eligible under the guidelines in place for the AFDC-related Medicaid Program in effect on July 16, 1996.

(9) "Inadequate access to a primary care provider (PCP)" means a KenPAC recipient does not have a choice of at least two (2) KenPAC PCPs with open panels who practice in the recipient's county of residence or an adjacent county.

(10) "Kentucky Children's Health Insurance Program" or "KCHIP" means the children's insurance program administered in accordance with 907 KAR 4:020 and 907 KAR 4:030.

(11) "Medical service area" means the recipient's county of residence and the counties that adjoin the recipient's county of residence.

(12) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(13) "Newborn care service" means a routine health care service that is provided by a physician, an advanced registered nurse practitioner, or a physician assistant to a newborn as a continuation of care following the delivery while the mother and newborn are hospitalized in the same hospital and that includes:

- (a) Standby for newborn care;
- (b) Initial normal newborn care;
- (c) Subsequent hospital newborn follow-up care;
- (d) Hospital discharge; and
- (e) Circumcision.

(14) "Open panel" means the capacity of a KenPAC primary care provider to accept more eligible KenPAC recipients.

(15) "Physician assistant" is defined in KRS 311.550(17).

(16) "Poverty-related women and children" means a group of eligibles that includes a pregnant woman or a child up to the age of nineteen (19) years whose eligibility is determined using the federal poverty levels as an income standard.

(17) "Primary care case management" or "PCCM" means a system of managed care used by state Medicaid agencies in which a primary care provider (PCP) is responsible for approving and

monitoring the care of enrolled Medicaid beneficiaries for a monthly case management fee, in addition to the fee-for-service reimbursement for treatment.

(18) "Primary care provider" or "PCP" means a health care provider who:

(a) Is a doctor of medicine or osteopathy, a licensed and certified advanced registered nurse practitioner (ARNP), a licensed primary care center or a licensed rural health clinic, or a physician or ARNP group practice which bills the department using a group practice Medicaid provider number; and

(b) Meets the requirements of Section 6 of this administrative regulation.

(19) "Primary care center" means a health facility operating in accordance with 907 KAR 1:054.

(20) "Prudent layperson standard" means the criterion used to determine the existence of an emergency medical condition whereby a prudent layperson determines that a medical condition manifests itself by acute symptoms of sufficient severity (including severe pain) such that the person could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(21) "Rural health clinic" means a health facility operating in accordance with 907 KAR 1:082.

(22) "Spend-down" means time-limited medical assistance to individuals with eligibility determined by using medical expenses to meet excess income amounts in accordance with 907 KAR 1:640, Section 9.

(23) "SSI-related" means an individual age sixty-five (65) or older, blind or disabled who does not qualify for a SSI payment under 42 USC 1382(e).

(24) "Supplemental security income (SSI)" is defined in 42 USC 1382(e).

(25) "Urgent care" means a covered service that, while not required on an emergency basis, is required promptly to prevent substantial deterioration of a KenPAC recipient's health status and for which the failure to provide a service promptly would reasonably be anticipated to cause substantial harm to a recipient. For purposes of this definition, promptly shall mean the same day or within forty-eight (48) hours based on a medical provider's assessment of urgency of need.

Section 2. General Requirements. (1) Except in geographic areas where Medicaid services are provided under the authority of a Section 1115 waiver in accordance with 907 KAR 1:705 or where the department has determined that there is an inadequate number of primary care providers participating in KenPAC, the Medicaid Program's primary care case management system known as the Kentucky Patient Access and Care (KenPAC) System shall be available statewide.

(2) If a partnership formed in accordance with 907 KAR 1:705 is dissolved, terminated, or fails to renew its contract with the department, Medicaid recipients who are eligible in accordance with Section 3 of this administrative regulation, and who are eligible to receive services through the partnership shall be provided primary care case management in accordance with this administrative regulation.

Section 3. Recipient Participation. A recipient included in one of the following categories shall be required to receive Medicaid services through KenPAC unless excluded in accordance with Section 4 of this administrative regulation:

- (1) AFDC-related;
- (2) Family-related;
- (3) Poverty-related women and children;
- (4) Kentucky Children's Health Insurance Program (KCHIP);
- (5) Supplemental security income (SSI) recipients age nineteen (19) and above;
- (6) SSI-related; and
- (7) Receiving state supplementation.

Section 4. Recipient Exclusions from KenPAC. (1) The following



shall not be enrolled in the KenPAC program;

(a) An individual receiving Medicare benefits;

(b) An American Indian who is a registered member of a federally-recognized tribe;

(c) A child under nineteen (19) years of age who is:

1. Eligible for supplemental security income (SSI) under 42 USC 1382(e);

2. Described in 42 USC 1396a(e)(3);

3. In foster care or subsidized adoption;

4. Receiving comprehensive case management services through a family-centered, community-based, coordinated care system receiving grant funds under 42 USC 701(a)(1)(D); or

5. In the custody of the Department of Juvenile Justice and is placed outside the home;

(d) A recipient who participates in the Kentucky Health Insurance Premium Payment Program (KHIPP);

(e) A recipient who is:

1. A resident of a nursing facility;

2. A resident of an intermediate care facility for the mentally retarded; or

3. Receiving services through a home and community based waiver program in accordance with 907 KAR 1:070, 907 KAR 1:090, 907 KAR 1:145, 907 KAR 1:160, 907 KAR 1:595, or 907 KAR 3:090;

(f) A recipient who resides in a county in which Medicaid services are provided through a managed care partnership operating under the authority of a Section 1115 waiver in accordance with 907 KAR 1:705;

(g) A recipient who is an alien with time-limited Medicaid eligibility;

(h) A recipient who has a Medicaid eligibility period that is only retroactive;

(i) A recipient who is Medicaid eligible through spend-down status;

(j) A recipient who is deceased on the date of eligibility approval;

(k) A resident of a psychiatric hospital or psychiatric residential treatment facility;

(l) A recipient who is receiving hospice services;

(m) A recipient whose care is coordinated through the Hemophilia Treatment Program of the Kentucky Commission for Children with Special Health Care Needs; or

(n) A Medicaid recipient for whom the primary payer is a third-party payer other than Medicaid and whose health care is coordinated by a primary care provider.

(2) An individual who would be eligible for and required to participate in KenPAC but who resides in a county, where the department has determined that there is an inadequate number of PCPs participating in KenPAC, shall be exempt from mandatory KenPAC enrollment until an adequate number of PCPs are available in the geographic area.

(3) The department shall have the right to exempt a recipient from participation in KenPAC if the recipient has complex and extensive medical care needs that would not be appropriately met through the primary care case management system.

(a) A request for exemption from participation in KenPAC shall be determined by clinical review of medical and psychosocial information on a case-by-case basis by the department.

(b) The determination of whether a recipient is to be exempt from KenPAC shall be based on:

1. Whether the healthcare care needs can be treated by a KenPAC PCP in the recipient's medical service area, with referral, as appropriate, considering the nature and extent of the treatment regimen; and

2. The complexity of the medical diagnoses.

Section 5. Burden of Proof. Pursuant to KRS 13B.090(7), the recipient has the burden of proof to show that he or she is entitled to exemption or exclusion from KenPAC.

Section 6. Provider Participation. A KenPAC primary care provider (PCP) shall:

(1) Be limited to the following:

(a) A licensed primary care physician who is a doctor of medicine or osteopathy and who is a general practitioner, family practitioner, pediatrician, internist, obstetrician, or gynecologist;

(b) A licensed, certified advanced registered nurse practitioner who:

1. Has a "Collaborative Practice Agreement for Prescriptive Authority" in accordance with KRS 314.042; and

2. Has a signed written agreement with a primary care physician for backup twenty-four (24) hours per day seven (7) days a week for needed prescriptions and other primary care services outside the scope of practice of the advanced registered nurse practitioner;

(c) A physician group practice which bills the department using a group practice Medicaid provider number;

(d) A licensed primary care center operating under physician supervision which has at least one (1) full-time equivalent primary care physician who is a general practitioner, family practitioner, doctor of osteopathy, pediatrician, internist, obstetrician, or gynecologist;

(e) A licensed rural health clinic operating under physician supervision by a primary care physician who is a general practitioner, family practitioner, doctor of osteopathy, pediatrician, internist, obstetrician, or gynecologist; or

(f) A licensed physician specialist who is a doctor of medicine or osteopathy if the specialist agrees to serve as a primary care provider and agrees to perform all the duties and responsibilities established in the KenPAC provider agreement;

(2) Be responsible for supervising, coordinating, and providing initial and primary care to KenPAC recipients;

(3) Be responsible for initiating referrals for specialty care;

(4) Be responsible for maintaining the continuity of patient care twenty-four (24) hours per day, seven (7) days a week; and

(5) Have hospital admitting privileges or a formal referral agreement with a primary care provider who has hospital admitting privileges.

Section 7. KenPAC Provider Agreements. A participating primary care provider shall be required to sign a KenPAC participation agreement in compliance with 42 USC 1396d(t) in addition to the standard Medicaid provider agreement in accordance with 907 KAR 1:672, and shall be bound by its terms and conditions.

Section 8. Quotas. (1) Each PCP shall be required to specify in the KenPAC provider agreement the number of recipients the PCP is willing to serve.

(2) The upper limit shall be 1,500 recipients per full-time equivalent individually enrolled primary care provider unless the department has made a determination that it is in the best interest of Medicaid recipients to exceed the limit.

(3) The upper limit for a group practice shall be 1,500 recipients per participating full-time equivalent physician or ARNP who signs a KenPAC provider agreement with the department.

(4) The upper limit for a rural health clinic or primary care center shall be 1,500 recipients per participating full-time equivalent physician, ARNP or physician assistant employed by or under contract with a licensed primary care center or licensed rural health clinic.

Section 9. Primary Care Provider Fees. (1) The department shall pay a primary care case management fee of four (4) dollars per month per KenPAC recipient assigned.

(2) If a physician, ARNP, or physician assistant is employed by or under contract with a licensed primary care center or a licensed rural health clinic, the KenPAC case management fee shall be paid to the primary care center or rural health clinic;

(3) If a physician or ARNP participates in a group practice that is enrolled with the KenPAC program under a Medicaid group practice number, the KenPAC case management fee shall be paid to the group practice; and

(4) If a physician or ARNP is enrolled with the KenPAC program under an individual Medicaid provider number, the KenPAC case management fee shall be paid to the individual PCP.

Section 10. Prior Authorization and Management of Services. (1) Except for services identified in subsection (3)(a) through (q) of this section or provided pursuant to an approved referral to a physician specialist, the PCP shall be responsible for managing the following:

(a) Primary care provider and physician specialty services;

(b) Hospital inpatient and outpatient services;

- (c) Ambulatory surgical center services;
  - (d) Home health services;
  - (e) Primary care center services and rural health clinic services;
  - (f) Advanced registered nurse practitioner services if it is a non-excluded service provided by an ARNP who is not the primary care case manager;
  - (g) Durable medical equipment and medical supplies;
  - (h) Laboratory and radiological services;
  - (i) Pharmacy services prescribed by the PCP; and
  - (j) Physical therapy, occupational therapy, and speech therapy.
- (2) Access to emergency care or services for treatment of an emergency medical condition shall be made available in accordance with the prudent layperson standard.
- (3) A covered Medicaid service in the following categories shall not require prior authorization from the KenPAC PCP:
- (a) A service provided by a dentist or oral surgeon in accordance with 907 KAR 1:026;
  - (b) A mental health service provided by:
    - 1. A psychiatrist;
    - 2. A psychiatric facility;
    - 3. A clinic;
    - 4. An advanced registered nurse practitioner (ARNP) who has a specialty area in accordance with the American Nurses' Association Statement on Psychiatric Mental Health Clinical Nursing Practice and Standards of Psychiatric Mental Health Clinical Nursing Practice in accordance with 201 KAR 20:057; or
  - 5. Another mental health provider in accordance with 907 KAR 1:044 and 907 KAR 1:505;
  - (c) A service provided by an ophthalmologist or optometrist, and eyeglasses in accordance with 907 KAR 1:038;
  - (d) A maternity care service including prenatal care, delivery, and postpartum care;
  - (e) A service provided by a podiatrist in accordance with 907 KAR 1:270;
  - (f) A general medical transportation service or an emergency or nonemergency ambulance service provided in accordance with 907 KAR 1:060 and 907 KAR 3:066;
  - (g) An EPSDT service provided in accordance with 907 KAR 1:034;
  - (h) A service provided by the Kentucky Early Intervention Services Program in accordance with 907 KAR 1:720;
  - (i) A service provided by an audiologist or hearing aid dealer and hearing aids in accordance with 907 KAR 1:038;
  - (j) A family planning service;
  - (k) A service provided through the Medicaid preventive services program by a local public health department in accordance with 907 KAR 1:360;
  - (l) A chiropractic service provided in accordance with 907 KAR 3:125;
  - (m) A newborn care service;
  - (n) A specialized children's services clinic service provided in accordance with 907 KAR 3:160;
  - (o) A service provided by Health Access Nurturing Development Service (HANDS) in accordance with 907 KAR 3:140;
  - (p) A school-based service provided in accordance with 907 KAR 1:715; and
  - (q) A service for which the department has made a determination on an individual basis that it would be in the best interest of the Medicaid recipient to exempt the service from KenPAC prior authorization.
- (4) Prior authorization shall not be required prior to delivery of emergency care.
- (5) A recipient may receive urgent care from a provider other than the recipient's PCP if the urgent care is:
- (a) Medically necessary;
  - (b) Needed the same day; and
  - (c) A service provider is unable to contact the PCP for prior authorization.

Section 11. Primary Care Provider Requirements. The primary care provider shall be responsible for the following:

- (1) Accepting a KenPAC recipient pursuant to the terms and conditions of the KenPAC provider agreement;
- (2) Supervising, coordinating, and providing initial and primary

care to KenPAC recipients;

- (3) Initiating referrals for specialty care to a Medicaid participating provider;
- (4) Except for an emergency room service and a service specified in Section 10(3) of this administrative regulation, authorizing medically necessary services or specialist referrals;
- (5) Maintaining the continuity of patient care twenty-four (24) hours per day, seven (7) days a week;
- (6) Assuring that a recipient under age twenty-one (21) receives appropriate preventive care in accordance with the EPSDT periodicity schedule specified in 907 KAR 1:034; and
- (7) Serving as a resource, as needed, to providers of nonemergency ambulance transportation and nonemergency transportation services to facilitate recipient access to medically-necessary transportation services.

Section 12. Recipient Assignment. (1) Except as permitted in accordance with subsection (7) of this section, a recipient shall select a KenPAC primary care provider from the participating KenPAC providers in the recipient's county of residence or an adjacent county.

(2) A recipient shall have a choice of at least two (2) KenPAC PCPs with open panels who practice in the recipient's county of residence or an adjacent county.

(3) If a recipient does not make a selection, the recipient shall be assigned on an equitable basis by the department to a KenPAC PCP in accordance with 42 USC 1396u-2(a)(4)(D).

(4) A recipient shall be allowed to disenroll from a KenPAC PCP and select another PCP upon verbal or written request to the department:

- (a) Without cause in the following circumstances:
  - 1. During the ninety (90) days following the date of the recipient's initial enrollment, or the date the department sends the recipient notice of initial enrollment, whichever is later;
  - 2. At least once every twelve (12) months after initial enrollment, with notice provided by the department at least sixty (60) days prior to the annual opportunity to select another PCP;
  - 3. Upon automatic reenrollment, if a temporary loss of Medicaid eligibility has caused a recipient to miss an annual disenrollment opportunity;
  - 4. If the department imposes an intermediate sanction on the PCP as specified in 42 CFR 438.702(a)(3); or
  - 5. If the recipient no longer resides within the same county; and
- (b) At any time with cause in the following circumstances:
  - 1. Incompatibility of the PCP-patient relationship;
  - 2. Lack of access to Medicaid-covered services;
  - 3. Inability to receive an appointment with the PCP in a timely manner;
  - 4. The recipient was homeless or a migrant worker at the time of enrollment and was enrolled with a PCP by default; or
  - 5. A reason for which the department has made a determination on an individual basis that it would be in the best interest of the Medicaid recipient to change the PCP.
- (5) If it is determined by the department that a recipient's medical care needs are so complex and extensive that a primary care provider with specialized disease management expertise is required and is unavailable in the recipient's county of residence or an adjacent county, the department shall have the right to approve assignment to a primary care provider located in another geographic area.

Section 13. Disenrollment. (1) A primary care provider may request the department to disenroll a KenPAC recipient in accordance with the following:

- (a) Due to incompatibility of the PCP-patient relationship;
  - (b) Due to inability to adequately meet the medical needs of the recipient; or
  - (c) For a reason for which the department has made a determination on an individual basis that it would be in the best interest of the Medicaid recipient to change the PCP.
- (2) A PCP shall not request disenrollment because of:
- (a) A change in a recipient's health status except as specified in subsection (1)(b) of this section;
  - (b) A recipient's utilization of medical services;
  - (c) A recipient's diminished mental capacity; or

(d) A recipient's uncooperative or disruptive behavior resulting from his or her special needs unless the behavior impairs the ability of the PCP to furnish services to the recipient or others.

(3) The effective date of an approved disenrollment shall be no later than the first day of the second month following the month in which the department receives a request from the recipient for disenrollment or the PCP files a request for disenrollment.

(4) Upon disenrollment, the PCP shall continue to provide or arrange for the provision of primary care and other medically-necessary services and make referrals until a recipient is no longer assigned to that PCP.

(5) To request the disenrollment of a KenPAC recipient, a PCP shall write a letter to the recipient and mail or fax a copy to the department indicating the reason for the request for disenrollment.

**Section 14. Utilization Control.** (1) A primary care provider identified by the department as having an inappropriate utilization or performance pattern as defined in the KenPAC provider agreement shall be subject to probation as specified in the KenPAC provider agreement.

(2) The PCP shall be notified in writing of the probationary period, which shall not exceed six (6) months, and shall be provided with the opportunity for corrective action.

(3) A pattern of persistent and significant inappropriate utilization or performance as defined in the KenPAC provider agreement shall be grounds for termination as a KenPAC PCP.

(4) A KenPAC provider placed on probation or terminated may request an appeal of the decision in accordance Section 15(3) of this administrative regulation.

**Section 15. Appeal Rights.** (1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of an action involving utilization control of a Medicaid provider under Section 14 of this administrative regulation shall be in accordance with 907 KAR 1:671.

(4) A recipient whose disenrollment from a PCP is denied by the department shall be provided notice of the right to file a request for an administrative hearing and information about how to file an appeal.

**Section 16. Incorporation by Reference.** (1) The "Agreement for Participation as a Primary Care Provider or Clinic in the Kentucky Patient Access and Care System (KenPAC)", "May 2002 edition", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. through 4:30 p.m. ["Department" means the Department for Medicaid Services.

(2) "Emergency care" means any condition for which a delay in treatment will likely result in recipient's death or permanent impairment of recipient's health.

(3) "Spend-down" means as defined in 907 KAR 1:002.

(4) "Urgent care" means a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

**Section 2. General.** The department shall implement, within the Medicaid Program, a physician primary care case management system to be known as the Kentucky Patient Access and Care System (KenPAC). KenPAC shall be implemented and administered in accordance with the terms of the waiver granted by the Secretary, United States Department of Health and Human Services under the authority granted by 42 USC 1396n.

**Section 3. Recipient Participation.** All recipients of Aid to Families with Dependent Children (AFDC) and AFDC-related medical assistance only shall be required to participate in KenPAC unless excluded as shown in Section 4 of this administrative regulation.

**Section 4. Recipient Exclusions from KenPAC.** (1) Excluded

from KenPAC shall be individuals;

(a) Who are aged, blind, or disabled (i.e., individuals whose eligibility for Medicaid is based on age, blindness, or disability);

(b) Those who are in mental hospitals, nursing facilities, and personal care homes;

(c) Individuals in foster care or subsidized adoption status;

(d) All spend-down cases;

(e) Refugees; and

(f) All lock-in cases.

(2) Individuals eligible to participate but who reside in a county which does not have an adequate number of primary physicians or clinics participating in KenPAC shall not be required to participate in KenPAC until adequate physician or clinic resources are available in the county. The department may choose to permit voluntary participation by recipients in these counties.

**Section 5. Physician Participation.** (1) Primary care physicians permitted to participate in KenPAC shall be general practitioners, family practitioners, pediatricians, internists, obstetricians, gynecologists, and doctors of osteopathy.

(2) Clinics may participate if the clinic has at least one (1) full-time equivalent physician who is a primary care physician as shown in subsection (1) of this section.

(3) Rural health clinics may participate, but shall not be required to have a full-time equivalent primary care physician.

(4) Specialty physicians may participate under extraordinary circumstances if the department determines the participation would be in the best interests of both the recipient and the KenPAC system.

**Section 6. KenPAC Provider Agreements.** All participating primary care providers shall be required to sign a KenPAC participation agreement in addition to the standard Medicaid provider agreement and shall be bound by its terms and conditions.

**Section 7. Quotas.** Each primary care provider shall be required to specify the number of recipients the provider is willing to serve as primary care case manager. Unless circumstances exist which require the department to authorize a higher quota for a provider to ensure adequate coverage in an area, the upper limit shall be 1,500 recipients per full-time physician. Primary centers and rural health clinics may, in addition, have a quota of up to 300 recipients for each participating advanced registered nurse practitioner (ARNP).

**Section 8. Primary Care Case Management Fees.** (1) Each physician or clinic shall receive a management fee of three (3) dollars per month per KenPAC recipient assigned.

(2) If a primary care center or rural health center has advanced registered nurse practitioners (ARNP) on staff for whom an additional quota is allowed, the clinic shall be paid a management fee of three (3) dollars per month per recipient attributed to each ARNP (not to exceed 300 recipients per full-time ARNP), with the balance of the management fee computed in the manner previously specified.

**Section 9. Covered Services Under KenPAC.** (1) The following services shall be managed by the primary physician or clinic: physician services, hospital inpatient and outpatient services, home health agency services, laboratory services, ambulatory surgical center services, primary care center services, rural health center (clinic) services, durable medical equipment, other laboratory and x-ray services, physician's component of preventive services, advanced registered nurse practitioner services, and nurse anesthetist services.

(2) The physician services element shall not include services provided by ophthalmologists or psychiatrists or obstetrical services.

(3) All other services available under the Medicaid program shall be secured in the usual manner.

(4) Access to medically necessary emergency services shall not be restricted by KenPAC even though the medical service may customarily be within KenPAC.

(5) Urgent care if medical necessity dictates early treatment or hospitalization may be provided without preauthorization from the primary physician or clinic if the primary physician or clinic cannot be

scheduled.

(6) For both emergency and urgent care, authorization shall be obtained from either the primary physician or clinic or the Medicaid Program prior to billing Medicaid for the emergency or urgent care service.

(7) Inpatient hospital services element shall not include psychiatric and obstetrical services.

~~Section 10. Recipient Assignment. Each KenPAC recipient shall be afforded the opportunity to select his KenPAC provider from among participating KenPAC providers in his county of residence or any adjacent county. If a voluntary selection is not made, a primary care provider shall be assigned by the Medicaid program.~~

~~Section 11. Phase in of KenPAC. As adequate physician participation permits, KenPAC shall be phased in to additional counties. Recipients in these counties shall be assigned to the program at the scheduled semiannual or annual reinvestigation if possible.~~

~~Section 12. Hearing and Appeal Rights. Any individual required to participate in KenPAC shall be entitled to the same hearing and appeal rights as are available to any other applicant for or recipient of Medicaid as set forth in 907 KAR 1:560.~~

~~Section 13. Utilization Control. A primary care physician or clinic identified by the department as having an abusive or inappropriate utilization pattern, not consistent with the objectives of KenPAC, shall be removed from KenPAC and denied further participation rights in KenPAC. Any provider so excluded may seek review of the decision in accordance with the KenPAC provider agreement.~~

~~Section 14. The amendments to this administrative regulation shall be applicable for services provided on or after July 1, 1996.]~~

MIKE ROBINSON, Commissioner

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: May 10, 2002

FILED WITH LRC: May 13, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 2002, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2002, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Stuart Owen (564-6204)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the terms and conditions under which the Department for Medicaid Services shall administer the Kentucky Patient Access and Care System (KenPAC).

(b) The necessity of this administrative regulation: To allow all possible groups the benefit of participating in the KenPAC Program and to ensure adequate access to primary care case providers but to be able to exempt individuals from the program when necessary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides a method for the Department for Medicaid Services to establish a managed care program in accordance with 42 USC 1396u-2.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation establishes the guidelines for operating the program in accordance with 42 USC 1396u-2.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment allows an additional population group consisting of SSI adult, SSI-related, and state supplementation recipients to be included in the KenPAC program. It allows advanced registered nurse practitioners to become primary care case managers with a quota of 1500. And, this amendment also increases the monthly case management fee from \$3 to \$4 per member per month in accordance with 2000 Ky. Acts ch. 549, part I.A.41. This amendment substitutes primary care provider (PCP) for primary care case manager (PCCM) and adds definitions for inadequate access to a PCP, medical service area, open panel, primary care case management and a recipient with extensive and complex medical care needs. This amendment explains that a recipient may change a PCP without cause at least once every 12 months after initial enrollment in KenPAC, with notice provided by the department at least 60 days prior to the annual opportunity to select another PCP. This amendment excludes KenPAC recipients for whom the primary payer is a third-party payer other than Medicaid and whose health care is coordinated by a primary care provider. This amendment defines factors considered when the department reviews recipient requests for exemption from KenPAC. This amendment clarifies language about the exemption review process. This amendment adds language whereby the recipient has the burden of proof to show that he or she is entitled to exemption or exclusion from KenPAC.

(b) The necessity of the amendment to this administrative regulation: To ensure proper administration of the KenPAC Program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides a method for the Department for Medicaid Services to establish a managed care program in accordance with 42 USC 1396u-2.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the guidelines for operating the managed care program in accordance with 42 USC 1396u-2 and brings the KenPAC Program into compliance with 2000 Ky. Acts ch. 549, part I.A.41.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid recipients who are eligible for KenPAC and all KenPAC providers.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: All Medicaid recipients who are eligible for KenPAC will be impacted by including additional eligibility group. And all Medicaid providers will have additional eligibility groups added to their panels.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no change from the last filed emergency; and therefore, no new fiscal impact. This ordinary administrative regulation encompasses policy and cost reported changes in 4 previous emergency administrative regulations.

(b) On a continuing basis: Same

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of revenue to be used to implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation ap-

plies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Medicaid Services for Maternal**  
**and Children's Health**  
**(Amendment)**

**907 KAR 1:720. Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with the state Title V agency.**

RELATES TO: KRS 200.650 - 676, 205.520, 42 CFR 431.615, 42 USC 1471-1485

STATUTORY AUTHORITY: KRS 194A.050(1), 200.660(7), 205.520(3) [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any [a] requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes requirements for coverage and payment for early intervention services provided through an agreement with the state Title V agency, the Commission for Children with Special Health Care Needs [Department for Public Health].

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Early intervention services" is defined in [by] KRS 200.654(7).

(3) "Title V agency" means the Commission for Children with Special Health Care Needs [Department for Public Health].

Section 2. Covered Services. (1) Services shall be provided for a Medicaid eligible child under the age of three (3) who meets eligibility requirements for early intervention as established in 911 [908] KAR 2:120, Section 2.

(2) The service to be provided shall be a service described in 911 [908] KAR 2:160 except for the following services which shall not be covered:

- (a) Respite care;
- (b) Transportation;
- (c) Teacher of the deaf and hard of hearing; and
- (d) Teacher of the visually impaired.

(3) Services shall be coordinated and information exchanged with the child's assigned primary care provider [physician] in the:

(a) Health Care Partnership in accordance with 907 KAR 1:705; or

(b) KenPAC Program in accordance with 907 KAR 1:320. [Information shall also be exchanged with a provider participating in a managed behavioral health care organization established pursuant to 907 KAR 1:710 with appropriate consent.]

(4) Services shall be provided pursuant to an interagency agreement between the department and [r] the Title V agency [and the Department for Mental Health and Mental Retardation Services].

Section 3. Provider Qualifications and Conditions for Participation. The following provider qualifications and conditions for participation shall be applicable for services provided pursuant to this administrative regulation.

(1) Services shall be provided by the Title V agency or [directly,] through a subcontractor of the Title V agency [or through agreement with the Department for Mental Health and Mental Retardation

Services].

(2) If the Title V agency [Department for Mental Health and Mental Retardation Services] seeks to subcontract for the provision of services, the Title V agency [Department for Mental Health and Mental Retardation Services] shall subcontract for the provision of services in accordance with the provisions of the interagency agreement between the Title V agency and the department.

(3) A service which is provided by the Title V agency [Departments for Public Health or Mental Health and Mental Retardation Services] or its [their] subcontractors shall meet the appropriate requirements for the service, as established in 911 [908] KAR 2:160.

Section 4. Reimbursement. (1) Reimbursement for services provided on and after October 22, 2001 shall be based on cost associated with providing the service that includes the:

- (a) Direct cost;
- (b) Overhead cost; and
- (c) Administrative cost associated with providing the service.

(2) Payments shall be made on an interim basis in accordance with a fee schedule established in 911 KAR 2:200 with a settlement to cost at the end of the fiscal year.

(3) An annual cost report shall be submitted to the department within 180 days after the close of the state fiscal year.

(4) Interim payments shall be adjusted to actual cost based upon review and acceptance of the cost report by the department.

(5) The Title V agency may submit for consideration an amended cost report for a state fiscal year up to twenty-four (24) months after the close of that state fiscal year. [Reimbursement shall be the documented cost for the direct provision of the services. The administrative and indirect overhead costs to the Department for Public Health and Mental Health and Mental Retardation Services shall not be reimbursed by the department.]

(1) A payment shall be based on the actual expenditure incurred for the provision of the service by the Title V agency or the Department for Mental Health and Mental Retardation Services.

(2) The amount paid for a Department for Mental Health and Mental Retardation Services subcontracted service shall:

(a) Be at the service rate established by the Department for Mental Health and Mental Retardation Services in 908 KAR 2:200, Section 3; and

(b) Not be adjusted except as necessary to correct a billing or payment error.

(3) An amount paid for a Department for Public Health subcontracted service shall be at a rate not to exceed the rate established by the Department for Mental Health and Mental Retardation Services in 908 KAR 2:200.]

MIKE ROBINSON, Commissioner

MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: April 16, 2002

FILED WITH LRC: April 17, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 2002 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2002, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Agency Contact Person: Teresa Goodrich or Stuart Owen

(1) Provide a brief summary of:



(a) What this administrative regulation does: KRS 200.650 through 200.676 authorize the Cabinet for Health Services to implement an early intervention program until the child's third birthday. This administrative regulation establishes the requirements for coverage and payments for early intervention services provided through an interagency agreement with the state Title V agency, the Commission for Children with Special Health Care Needs.

(b) The necessity of this administrative regulation: To enable the Cabinet for Health Services to implement an early intervention system for children from birth until their third birthday.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the coverage and payments for early intervention services provided through an interagency agreement between the department and the Title V agency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that the cabinet provides the early intervention services stipulated in the statutes.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment provides for the reimbursement by the department for administrative and overhead costs incurred by the Title V agency. The amendment also reflects the transfer of authority for the program from the Department for Mental Health and Mental Retardation Services to the Commission for Children with Special Health Care Needs pursuant to an executive order.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to change references from the Department for Mental Health and Mental Retardation Services to the Commission for Children with Special Health Care Needs and to provide for the reimbursement for overhead and administrative costs incurred by the Title V agency.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes state that the cabinet is to administer this program. By transferring authority, the administrative regulation continues to be in compliance with the statute.

(d) How the amendment will assist in the effective administration of the statutes: Due to the fact that the Commission for Children with Special Health Care Needs serves many of the same children served by this program, duplication of services may be minimized and may be provided in a more effective and efficient manner. Also, since the Commission for Children with Special Health Care Needs is a Title V agency, Medicaid may reimburse administrative and overhead costs at an increased 70/30-match rate. This provides for a maximization of federal funding.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation transfers authority for the Kentucky Early Intervention Program from the Department for Mental Health and Mental Retardation (DMHMR) to the Commission for Children with Special Health Care Needs (CCSHCN). The CCSHCN will be reimbursed for direct, overhead and administrative costs. The DMHMR will no longer be responsible for administering this program. Recipients receiving services will not be affected by this change.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment changes the Title V agency responsible for administering the Kentucky Early Intervention Program from the Department for Public Health to the CCSHCN. CCSHCN will receive reimbursement for indirect and overhead costs associated with administering the program. The Department for Public Health will not be providing services to recipients in the Kentucky Early Intervention Program. The CCSHCN will be responsible for providing the state match for this program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: \$10,806,021 (federal funds); \$4,639,978 (state funds).

(b) On a continuing basis: Same

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Sources of revenue for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state revenues provided by the Commission for Children with Special Health Care Needs. The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to access new state funding to implement this regulation. However, an increase in federal funding will occur.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**CABINET FOR HEALTH SERVICES**  
**Commission for Children with Special Health Care Needs**  
**Division of Administrative Services**  
**(Amendment)**

**911 KAR 1:080. SSI Children's Support Services (SSI/CSS)**  
**[Disabled Children's] Program.**

RELATES TO: KRS 200.460, 42 CFR 51(a), 42 USC 701 et seq., 1381 et seq.

STATUTORY AUTHORITY: KRS 194A.030(7), 200.460 [194.030(13)]

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 701 et seq. (Title V of the Social Security Act, as amended by PL 97-35) authorizes grants to states to provide rehabilitation services for [certain] blind and disabled children receiving benefits pursuant to 42 USC 1381 et seq. ( [under] Title XVI of the Social Security Act) The Commission for Children with Special Health Care Needs is authorized by KRS 194A.030(7) to promulgate [194.030(13)] to adopt such administrative regulations in order [as are necessary] to implement programs authorized by federal law that [so as to] qualify for the receipt of federal funds [and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs]. The function of this administrative regulation is to establish the eligibility criteria and covered services available through the SSI Children's Support Services [implement the Kentucky Disabled Children's] Program in accordance with [applicable] federal laws and regulations.

Section 1. Definitions. [As used in this administrative regulation:]

(1) "Commission" means the Commission for Children with Special Health Care Needs.

(2) "Medically necessary" or "medical necessity" is defined in 907 KAR 3:130.

(3) "Supplemental security income" or "SSI" means the federal cash assistance [income supplement] program authorized by 42 USC 1381 et seq. [Title VI of the Social Security Act that includes a provision for financial payments to families with disabled children.

(2) "Individual service plan" means a written plan designed to organize and coordinate the goal-oriented care of each eligible child.]

Section 2. Eligibility Criteria. In order to be eligible for an item or service provided through this program, a child shall:

(1) Be a resident of Kentucky;

(2) Qualify for a supplemental security income payment;

(3) Be under the age of sixteen (16); and

(4) Have a need that has been determined to be medically necessary pursuant to Section 5(3) of this administrative regulation. [for



~~Services. Only children receiving supplemental security income who are under seven (7) years of age, or who are under sixteen (16) years of age and have never attended school, shall be eligible for services under this program.]~~

Section 3. SSI Children's Support Services. (1) A child who applies for SSI with the Social Security Administration shall be provided information at that office regarding services provided by various agencies or organizations.

(2) In accordance with 42 USC 1382(d), if a child is approved for SSI benefits, the Social Security Administration shall refer information regarding the child's approval for SSI benefits to the commission. Upon receipt of this information, the commission shall provide the following:

(a)1. If a child is aged from birth through two (2) years, the child shall be screened for eligibility for care coordination, clinical services or early intervention services provided through the commission. Within twenty (20) working days, the parent or legal guardian of the child shall receive a letter that:

a. Informs him that the commission has received notice of his child's SSI eligibility;

b. Provides him with information about potential commission services and how to contact the commission; and

c. Informs the parent or guardian that regardless of the child's eligibility for commission services, if his child has a medically-necessary need that cannot be provided under Medicaid, the family may contact their local commission office in order to apply for the SSI/CSS Program.

2. If the parent or legal guardian chooses to apply for services through this program, and provides the information established in Section 5 of this administrative regulation, within twenty (20) working days, the application shall be reviewed; and

3. If approved, he shall receive a letter that informs him that the application is approved, and arrangements shall be made to handle the purchase or service delivery through the local commission office nearest the child's home; or

4. If denied, he shall receive a letter that informs him that the application is denied, which shall include a reason for the denial and an explanation of his rights to request an administrative hearing.

(b)1. If a child is aged three (3) through fifteen (15) years and has a diagnosis for which care coordination or clinical services are not provided by the commission, within twenty (20) working days of this determination, the parent or legal guardian of the child shall receive a letter that:

a. Informs him that the commission has received notice of his child's SSI eligibility;

b. Provides him with general referral resource information; and

c. Advises him that if the child has a medically-necessary need that cannot be provided under Medicaid, he may contact his local commission office in order to apply for the SSI/CSS Program.

2. If the parent or legal guardian chooses to apply for services through this program, and provides the information established in Section 5 of this administrative regulation, within twenty (20) working days, the application shall be reviewed; and

3. If approved, he shall receive a letter that informs him that the application is approved, and arrangements shall be made to handle the purchase or service delivery through the local commission office nearest the child's home; or

4. If denied, he shall receive a letter that informs him that the application is denied, which shall include a reason for the denial and an explanation of his rights to request an administrative hearing.

(c)1. If a child is aged three (3) through fifteen (15) years and has a diagnosis for which care coordination or clinical services are provided through the commission, and for which the child may be eligible, within twenty (20) working days, the parent or legal guardian of the child shall receive a letter that:

a. Informs him that the commission has received notice of his child's SSI eligibility;

b. Provides him with information about potential commission services and how to contact the commission; and

c. Informs the parent or guardian that regardless of the child's eligibility for commission services, if his child has a medically-necessary need that cannot be provided under Medicaid, the family may contact their local commission office in order to apply for the

SSI/CSS Program.

2. If the parent or legal guardian chooses to apply for services through this program, and provides the information established in Section 5 of this administrative regulation, within twenty (20) working days, the application shall be reviewed; and

3. If approved, he shall receive a letter that informs him that the application is approved, and arrangements shall be made to handle the purchase or service delivery through the local commission office nearest the child's home; or

4. If denied, he shall receive a letter that informs him that the application is denied, which shall include a reason for the denial and an explanation of his rights to request an administrative hearing.

(3) In order for an item or service to be provided through the SSI Children's Support Services Program it shall be determined to be medically necessary in accordance with Section 5(3) of this administrative regulation by:

(a) The child's physician; or

(b) An advanced registered nurse practitioner.

(4) An item or service shall be prior authorized in accordance with Section 5 of this administrative regulation.

(5) In accordance with provisions established in Sections 4 and 5 of this administrative regulation, the commission shall provide an item or service if there are sufficient appropriated funds for the current fiscal year.

(6) An item or service shall not be eligible for reimbursement through another funding source, such as Medicaid, in order to be reimbursed by this program.

(7) Commission staff may secure an additional service by referring a child to another organization that has qualified personnel that may meet the child's special needs.

Section 4. Program Fee Schedule and Expenditure Limits. (1) The fee schedule and expenditure limits established in this section shall include shipping and handling for an approved item.

(2) Expenditure limits established in this section shall be subject to the availability of appropriated funds at the time the request is received.

(3) A service or item shall be prior authorized by the commission in accordance with Section 5 of this administrative regulation to ensure medical necessity and availability of funds.

(4) Except for a service specified in subsection (5) of this section, the maximum amount per fiscal year that a child shall have available for a service or item shall be \$500.

(5)(a) Reimbursement for transportation shall be provided at thirty-two (32) cents per mile if the trip is for critical medical care and is more than fifty (50) miles each way.

(b) Reimbursement for lodging may be authorized if an overnight stay is required and the trip is for critical medical care.

(c) Exceptions to the \$500 maximum may be provided for transportation or lodging on a case-by-case basis.

(6) Family support services shall be authorized if circumstances warrant a child's removal from the home or prevent a child from being discharged from a health care facility to his home and the service will rectify the situation.

(7) Items that are available for prior authorization in accordance with Sections 3 and 5 of this administrative regulation shall be:

(a) Adaptive equipment;

(b) Medical supplies or equipment; and

(c) Medications, lotions or ointments.

Section 5. Prior Authorization Procedures. In order for an item or service to be approved, a person identified in Section 3(2) of this administrative regulation or the child's guardian shall contact the Commission for Children with Special Health Care Needs office serving the child's county and, in accordance with Section 3 of this administrative regulation, provide:

(1) The child's name and Medicaid identification number;

(2) Information as to the exact item or service needed and its cost;

(3) Proof of medical necessity explaining the need for the service as evidenced by a prescription or a letter signed by a person identified in Section 3(2) of this administrative regulation;

(4) Except for items or services not covered by Medicaid, evidence that the service or item has been requested and denied by

the Medicaid Program; and

(5) Other documentation necessary to justify the medical necessity of the requested service.

**Section 6. Appeal Rights.** If dissatisfied with an action taken by the commission, a child, his parent or his guardian shall be entitled to pursue filing a complaint or request an administrative hearing with the cabinet, to be conducted in accordance with KRS Chapter 13B. ~~[Disabled Children's Program Services. Services under the Disabled Children's Program shall include location, identification, development of individual service plans, case management and early intervention. If not available through other sources, the Commission for Children with Special Health Care Needs' Disabled Children's Program may within budgetary limitations provide for physical therapy, occupational therapy, speech therapy, infant stimulation, purchase of medications, medical supplies and devices, respite care, developmental day care, adaptive equipment, educational toys and other such services specified in the approved individual service plan.]~~

~~**Section 4. Referral to Service Providers.** The Commission for Children with Special Health Care Needs shall contract with qualified service providers to deliver services under the Disabled Children's Program. Referrals to such service providers may be made by the commission's staff to community mental health/mental retardation boards for locating and identifying clients and for developing the individual service plan. Additional services may be secured by referring clients to other organizations which have qualified personnel that may meet the special needs of clients.]~~

JAMES GILDERSLEVE, Chair  
ERIC FRIEDLANDER, Executive Director  
MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: May 10, 2002

FILED WITH LRC: May 13, 2002 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on June 21, 2002 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2002, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Trish Howard (502-595-4459 ext. 267) or Eric Friedlander (502-595-4459 ext. 271)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility criteria and covered services available through the SSI Children's Support Services Program.

(b) The necessity of this administrative regulation: KRS 194A.030(7) requires the Commission for Children with Special Health Care Needs to promulgate regulations in order to implement programs authorized by federal law that qualify for federal funding. 42 USC 1381 et seq. requires the Title V agencies to accept referrals from the Social Security Administration for all children under age 16 approved for supplemental security income (SSI) benefits and provide them with rehabilitative services. Promulgation of this administrative regulation serves that purpose.

(c) How this administrative regulation conforms to the content of the authorizing statutes: See (b) above.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See (b) above.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment provides for a process by which the Commission for Children with Special Health Care Needs will accept the referral from the Social Security Administration and will provide the rehabilitative services to SSI eligible children.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to be compliant with federal mandates to provide these services to all SSI eligible children under the age of 16.

(c) How the amendment conforms to the content of the authorizing statutes: 42 USC 1381 et seq. requires the Title V agencies to accept referrals from the Social Security Administration for all children under age 16 approved for supplemental security income (SSI) benefits and provide them with rehabilitative services. Promulgation of this administrative regulation serves that purpose.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides for a process by which the Commission for Children with Special Health Care Needs will accept the referral from the Social Security Administration and will provide the rehabilitative services to SSI eligible children.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The 14 comprehensive care centers will be affected by this amendment.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The 14 comprehensive care centers with which the Commission for Children with Special Health Care Needs contracted to provide DCP services will no longer be providing these services. Commission staff will now provide all services provided through this program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Total expenditures are anticipated to decrease by approximately \$300,000. This represents a 44% decrease from the current budgeted amount of \$683,300.

(b) On a continuing basis: Same

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is 50% Medicaid and 50% general fund dollars.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees associated with this amendment nor will there be a need for increased funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees directly or indirectly.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 701 et seq.

2. State compliance standards. This administrative regulation provides timeframes by which services shall be provided and for notifying a child's parent or guardian of the eligibility determination and their due process rights.

3. Minimum or uniform standards contained in the federal mandate. Federal requirements are to provide rehabilitation services for blind and disabled individuals under the age of 16 receiving benefits under Title XVI (SSI) to the extent medical assistance for such services is not provided under Title XIX or XXI of the Social Security Act (Medicaid or KCHIP).

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. N/A

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation relates to only part of a local government

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation affects the 14 comprehensive care centers in Kentucky

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 (+/-): The total contracted amounts received by the comprehensive care centers for fiscal year 2002 is \$347,000.

Expenditures (+/-): Due to the fact that fiscal year 2002 expenditures will not be calculated until after June 30, 2002, it is unknown if all the centers will have exhausted their allotted contract amounts. Recent years' utilization records indicate that virtually all of the contracted amounts are utilized.

Other Explanation: Promulgation of this administrative regulation will result in the Disabled Children's Program contracts the Commission for Children with Special Health Care Needs has with the 14 comprehensive care centers not being renewed as the Commission for Children with Special Health Care Needs staff will now provide all services.

#### CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (Amendment)

#### 922 KAR 2:170. Stars for KIDS NOW Program for type I licensed child care centers.

RELATES TO: KRS 13B.125, 199.8941, 199.8943, 199.8992  
STATUTORY AUTHORITY: KRS 199.8941(1), 199.8943(2)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.8943(2) requires the Cabinet for Families and Children to promulgate an administrative regulation that implements a voluntary quality-based graduated child care rating system for licensed child care centers; agency time frames for review of quality ratings; an appeals process under KRS Chapter 13B; and a process for the reevaluation of quality ratings. KRS 199.8941(1) requires the Early Childhood Development Authority to develop a program of monetary incentives tied to participation in a quality rating system. This administrative regulation establishes criteria for implementation of the voluntary quality rating system for type I licensed child care centers, and establishes the amount of each monetary incentive awarded to a participant in the Stars for KIDS NOW Program.

Section 1. Definitions. (1) "Commonwealth child care credential" means completion of sixty (60) clock hours of instruction from a state agency-approved organization that:

(a) Includes training in the following areas:

1. Child growth and development;
2. Learning environments and curriculum;
3. Health, safety, and nutrition;
4. Family and community partnerships;
5. Child assessments;
6. Professional development;
7. Program management; and

(b) Is effective for a period of one (1) year; and

(c) Is renewed upon completion of fifteen (15) hours of training.

(2) "Environment rating scale" means one (1) of four (4) rating scales, published by the Teacher College Press, designed to assess the process quality in an early childhood or school age care group, and consists of the following items to evaluate:

- (a) Physical environment;
- (b) Basic care;
- (c) Curriculum;
- (d) Interaction;
- (e) Schedule and program structure; and
- (f) Parent and staff education.

(3) ~~(2)~~ "Parental or family participation" means a child care program's attempt to provide information or involve a parent or caregiver in the program's activities, such as:

- (a) Distribution of a newsletter;
- (b) Distribution of a program calendar;
- (c) A conference between a child care program's staff and a parent or caregiver; or
- (d) Any other activity designed to engage a parent or caregiver in the program's activities.

(4) ~~(3)~~ "Program" or "Stars for KIDS NOW Program" means the voluntary quality-based graduated child care rating system.

(5) ~~(4)~~ "Resource and referral agency" is described at KRS 199.8992(1).

(6) "State agency" means the:

- (a) Cabinet for Health Services; or
- (b) Cabinet for Families and Children.

(7) "Substitute" means a person employed by a type I licensed child care center for a period not to exceed fourteen (14) days in a one (1) year period. An individual employed as a substitute in excess of fourteen (14) days in a one (1) year period shall meet the training requirement consistent with a center's rating level.

Section 2. Application. (1) A type I licensed child care center ~~not operating under a provisional license required by 922 KAR 2:090, Section 4(2),~~ may apply to participate in the program no sooner than six (6) months from the date of initial licensure. A center that changes ~~operating under a provisional license due to a change of~~ ownership may continue participation in the program:

- (a) ~~(i)~~ Under a provisional quality rating certificate;
- (b) ~~(i)~~ For a period of not more than six (6) months.

(2) If an applicant seeks participation as a level one (1) center:

(a) The applicant shall complete an "Application for Level One (1) Rating Certificate", incorporated by reference listed in Section 13(1)(a) of this administrative regulation; and

(b) ~~(i)~~ A resource and referral agency staff person ~~or designee~~ shall verify on the "Level One (1) Standards", incorporated by reference listed in Section 13(1)(b) of this administrative regulation, the center's documented compliance with the level one (1) requirements described in Section 3 of this administrative regulation.

(3) If an applicant seeks participation as a level two (2), three (3), or four (4) center, the applicant shall:

(a) Obtain a ~~"Request for~~ STAR Rating Visit Request Form", incorporated by reference listed in Section 13(1)(c) of this administrative regulation, from a resource and referral agency; and

(b) Submit the completed form to the Cabinet for Health Services.

(4) Upon receipt of a properly-completed "STAR Rating Visit Request Form", the Cabinet for Health Services shall:

(a) ~~Schedule~~ ~~Conduct~~ a prearranged rating visit within sixty (60) calendar days. During an initial and each subsequent rating visit, an environment rating scale shall be completed for one-third (1/3) of the total number of classrooms, including at least one (1) classroom for each of the following age groups for which the center provides care:

1. Birth to two and one-half (2.5) years of age;
2. Two and one-half (2.5) to five (5) years of age; and
3. Five (5) to twelve (12) years of age; and

(b) Issue to the applicant, within sixty (60) calendar days from the date of the rating visit, a quality rating certificate that shall:

1. Be valid for the period of one (1) year; and
2. Specify the rating level representing a child care center's compliance with the requirements of that level.

(5) A participant in the program may request, at least six (6)

months after issuance ~~(receipt)~~ of a quality rating certificate, another rating visit for the purpose of redetermining the center's rating.

Section 3. Level One (1) Requirements. A licensed child care center participating in the program as a level one (1) center shall:

(1) If, after two (2) years of participation as a level one (1) center, the center has not achieved a rating level above level one (1), the certificate shall expire. The center may reapply for participation six (6) months after expiration of the level one (1) quality rating certificate;

(2) Post prominently in each classroom, and maintain compliance with, the minimum staff-to-child ratios and group size established in 922 KAR 2:120;

(3) Comply with the staff requirements set forth in 922 KAR 2:110;

(4) Ensure that the center's director or an individual with decision-making authority such as the owner, board chair, or minister, attends an overview of the program prior to program participation;

(5) Agree to a curriculum assessment in which at least one (1) environment rating scale shall be used to observe each age group described in Section 2(4)(a)1 to 4 of this administrative regulation, under the following conditions:

(a) Each environment rating scale shall be conducted by the center's director with assistance from a resource and referral agency staff person ~~(or designee)~~, within the first twelve (12) months of participation in the program;

(b) Participation as a level one (1) center shall not require achievement of a specific score on the environment rating scale; and

(c) Upon completion of the environment rating scale by the center's director during the second year of participation as a level one (1) center, the director shall develop a written plan, with assistance from a resource and referral agency staff person ~~(or designee)~~ for improved performance in each area identified by the environment rating scale as needing improvement;

(6) Post in a prominent area, the center's:

(a) Planned program of activities; and

(b) Daily schedule;

(7) Coordinate at least one (1) annual activity involving parental or family participation;

(8) Implement an annual plan for professional development for each employee;

(9) Ensure that the individual who attended the overview described in subsection (2) of this section provides, to each employee who has direct supervisory authority over a child, training regarding the:

(a) Licensure requirements in:

1. 922 KAR 2:090, Child care facility licensure;

2. 922 KAR 2:110, Child care facility provider requirements; and

3. 922 KAR 2:120, Child care facility health and safety standards;

(b) Requirements for participation in the program;

(c) Environment rating scale; and

(d) Early Childhood Development Scholarship Program;

(10) Not have an immediate closure, denial of relicensure, or a pending suspension or revocation action against the center's license;

(11) Pays any civil penalty levied against the center if the:

(a) Center has waived the right to appeal a civil penalty; or

(b) Civil penalty has been upheld on appeal; and

(12) Comply with the requirements of 922 KAR 2:160, Child care assistance program.

Section 4. Level Two (2) Requirements. A licensed child care center participating in the program as a level two (2) center shall:

(1) Meet the requirements of Section 3(2), (3), (4), (6), (8), (9), (10), (11), and (12) of this administrative regulation;

(2) Have in each classroom a roster that specifies the first and last name of:

(a) The room's teacher or employee with supervisory authority over a child; and

(b) Each child enrolled in the center and cared for in that room;

(3) Coordinate at least two (2) annual activities that involve parental or family participation;

(4) Provide documentation of a written plan for parental or family involvement;

(5) Achieve an overall average score of at least three (3) on the environment rating scale, calculated based upon the total number of environment rating scales conducted during the quality rating visit;

(6) If the center achieves an overall average score of three (3) on the environment rating scale, develop a written plan, with assistance from a resource and referral agency staff person ~~(or designee)~~ for improved performance on subsequent rating scales;

(7) Achieve an overall average score of at least four (4) on the environment rating scale by the fifth year of participation as a level two (2) center;

(8) Maintain an overall average score of four (4) on the environment rating scale for each year beyond the fifth year of participation as a level two (2) center in the Stars for KIDS NOW Program;

(9) Comply with the provisions of:

(a) 11 KAR 16:040, Early Childhood Development Scholarship Program recordkeeping requirements; and

(b) 11 KAR 16:060, Early Childhood Development Scholarship Program system of monetary incentives;

(10) Ensure that each employee who has direct supervisory authority over a child:

(a) Receives three (3) clock hours of state agency ~~(Health Services Cabinet)~~-approved child development training annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110;

(b) Has completed the Commonwealth child care ~~(entry level)~~ credential ~~(consisting of forty (40) to sixty (60) clock hours of child development training)~~;

(c) Has a child development associate's credential;

(d) Has a Montessori Certificate; or

(e) Has an associate or higher level of education in:

1. Interdisciplinary early childhood education;

2. Early childhood special education;

3. Early childhood education;

4. Early childhood development;

5. Elementary education for teaching kindergarten through fourth grade, if the employee cares for school-age children; or

6. A related degree approved by the Early Childhood Development Authority;

(11) Ensure that the center's director, or the person responsible for the center's on-site operation, as required by 922 KAR 2:110:

(a) Receives six (6) clock hours of state agency ~~(Health Services Cabinet)~~-approved child development training annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110;

(b) After July 1, 2004, has completed the director's credential;

(c) Has a child development associate's credential;

(d) Has a Montessori Certificate; or

(e) Has an associate degree or higher level of education in:

1. Interdisciplinary early childhood education;

2. Early childhood special education;

3. Early childhood education;

4. Early childhood development;

5. Elementary education for teaching kindergarten through fourth grade, if the director works primarily with school-age children; or

6. A related degree approved by the Early Childhood Development Authority; and

(12) Provide documentation that standardized personnel evaluations are conducted annually.

Section 5. Level Three (3) Requirements. A licensed child care center participating in the program as a level three (3) center shall:

(1) Post prominently in each classroom and maintain the following staff-to-child ratios and group size:

Age	Ratio	Group Size
Birth - 1 year	1 staff for 4 children	8
1 to 2 years	1 staff for 5 children	10
2 to 3 years	1 staff for 8 children	16
3 to 4 years	1 staff for 11 children	22
4 to 6 years	1 staff for 12 children	24
6 to 12 years	1 staff for 14 children	28

(2) Meet the requirements of Section 3(2), (3), (4), (6), (8), (9), (10), (11), and (12) of this administrative regulation;

(3) Coordinate at least three (3) annual activities involving parental or family participation;

(4) Document a procedure for use of parental or family feedback;

(5) Achieve an overall average score of at least four point five (4.5) on the environment rating scale;

(6) Meet the requirements of Section 4(2), (4), (9), (10), (11)(b), (c), (d), or (e), and (12) of this administrative regulation;

(7) Ensure that at least fifty (50) percent of staff who have direct supervisory authority over a child have:

(a) Completed the Commonwealth child care ~~entry level~~ credential or obtained a higher level of education as described in Section 4(10)(c), (d), or (e) of this administrative regulation; or

(b) Before July 1, 2004, completed nine (9) clock hours of state agency ~~Health Services Cabinet~~-approved child development training beyond the twelve (12) hour requirement specified in 922 KAR 2:110;

(8) Ensure that at least fifty (50) percent of staff who have direct supervisory authority over a child are certified in infant and child cardiopulmonary resuscitation and infant and child first aid;

(9) Ensure that the center's director, or the person responsible for the center's on-site operation, receives twelve (12) clock hours of Health Services Cabinet-approved child development training annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110;

(10) Ensure that one (1) of the following is present in the center at least seventy-five (75) percent of the center's daily hours of operation:

(a) The center's director;

(b) A person responsible for the center's operation;

(c) An employee qualified as a child development associate; or

(d) An employee with a higher level of education, as described in Section 4(10)(d) and (e) of this administrative regulation;

(11) Provide at least six (6) days paid leave per year to each employee who:

(a) Works at least thirty-seven and one-half (37.5) hours per week in the center; and

(b) Has been employed in the center less than one (1) year;

(12) Provide paid leave in an amount prorated according to the standard set forth in subsection (11) of this section for each employee who:

(a) Works less than thirty-seven and one-half (37.5) hours per week in the center; and

(b) Has been employed in the center less than one (1) year;

(13) Provide at least eleven (11) days paid leave per year to each employee who:

(a) Works at least thirty-seven and one-half (37.5) hours per week in the center; and

(b) Has been employed in the center for at least one (1) year;

(14) Provide paid leave in an amount prorated according to the standard set forth in subsection (13) of this section for each teaching employee who:

(a) Works less than thirty-seven and one-half (37.5) hours per week in the center; and

(b) Has been employed in the center for at least one (1) year; and

(15) If year-round child care services are not offered, provide paid leave in an amount prorated according to the standards set forth in subsections (11), (12), (13), and (14) of this section.

Section 6. Level Four (4) Requirements. A licensed child care center participating in the program as a level four (4) center shall:

(1) Post prominently in each classroom and maintain the staff-to-child ratios and group size required by the National Association for the Education of Young Children, which are:

Age	Ratio	Group Size
0 to 12 months	1 staff for 3 children	6
	1 staff for 4 children	8
12 to 24 months	1 staff for 3 children	6
	1 staff for 4 [5] children	8
	1 staff for 5 children	10
	1 staff for 4 children	12

24 to 30 months	1 staff for 4 children	8
	1 staff for 5 children	10
	1 staff for 6 children	12
30 to 36 months	1 staff for 5 children	10
	1 staff for 6 children	12
	1 staff for 7 children	14
3 years old	1 staff for 7 children	14
	1 staff for 8 children	16
	1 staff for 9 children	18
	1 staff for 10 children	20
4 years old and older	1 staff for 8 children	16
	1 staff for 9 children	18
	1 staff for 10 children	20

(2) Meet the requirements of Section 3(2), (3), (4), (6), (8), (9), (10), (11), and (12) of this administrative regulation;

(3) Coordinate at least four (4) annual activities involving parental or family participation;

(4) Meet the requirements of Section 4(2), (4), (9), (10), (11)(b), (c), (d), or (e), and (12) of this administrative regulation;

(5) Meet the requirements of Section 5(4), (7), (8), (10), (11), (12), (13), (14), and (15) of this administrative regulation;

(6) Achieve an overall average score of at least six (6) on the environment rating scale;

(7) Be accredited by:

(a) The National Association for the Education of Young Children (NAEYC);

(b) The National Early Childhood Program Accreditation (NECPA);

(c) The National School-Age Care Alliance (NSACA); ~~or~~

(d) The Southern Association of Colleges and Schools (SACS);

or

(e) An organization approved by the Early Childhood Development Authority;

(8) Ensure that at least one (1) employee who has a child development associate's credential or higher level of education, as described in Section 4(10)(d) and (e) of this administrative regulation, is present in each classroom during hours of operation;

(9) Ensure that the center's director or employee who is designated responsible for the center's on-site operation as required by 922 KAR 2:110:

(a) Meets the standards recommended by the organization by which the center is accredited;

(b) Receives twelve (12) clock hours of annual child development training beyond the twelve (12) hour requirement specified in 922 KAR 2:110; and

(c) After July 1, 2004, has completed the director's credential;

(10) Ensure that health insurance is available to each employee of the center;

(11) Pay at least fifty (50) percent of the cost of a single health insurance plan for each employee who works at least thirty-seven and one-half (37.5) hours per week in the center; and

(12) Pay the cost of a single health insurance plan in an amount no less than a percentage prorated according to the standard set forth in subsection (11) of this section, for each employee who works less than thirty-seven and one-half (37.5) hours per week in the center.

Section 7. Star Achievement and Quality Incentive Awards. (1) A one (1) time participation award of \$200 shall be awarded, to the extent that funds are available, to a provider who enters the program as a level one (1) participant. ~~[star achievement and quality incentive award shall not be available to a level one (1) program participant.]~~

(2) A one (1) time star achievement award shall be awarded, to the extent that funds are available, according to the following chart:

	Level 2	Level 3	Level 4
Participant's enrollment is less than 50 children	\$500	\$1,700 <del>[4,000]</del>	\$3,000 <del>[2,000]</del>
Participant's enrollment 51 to 100 children	\$750	\$2,200 <del>[4,500]</del>	\$4,000 <del>[3,000]</del>
Participant's enrollment more than 100 children	\$1,000	\$2,700 <del>[2,000]</del>	\$5,000 <del>[4,000]</del>

(3) If a child care center's initial rating level is higher than level two (2), the center shall receive a star achievement award, to the



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extent that funds are available, for each level, beginning at level two (2), up to the center's rating level. A center shall not receive an award for a level more than one (1) time.

(4) If a participating center continues in the program under new ownership, a star achievement award shall not be paid to the new

owner unless the center's rating level increases.

(5) A quality incentive award shall not be available to a level one (1) program participant.

(6) The following chart shall be used when calculating the amount of a quality incentive award:

	Amount per month for each child served by the Child Care Assistance Program who is under age three (3)			Amount per month for each child served by the Child Care Assistance Program who is age three (3) and over		
	Level 2	Level 3	Level 4	Level 2	Level 3	Level 4
1-10% of participant's enrollment served by the Child Care Assistance Program	\$8	\$11	\$13	\$7	\$10	\$12
11-25% of participant's enrollment served by the Child Care Assistance Program	\$9	\$12	\$14	\$8	\$11	\$13
26-50% of participant's enrollment served by the Child Care Assistance Program	\$10	\$13	\$15	\$9	\$12	\$14
51-75% of participant's enrollment served by the Child Care Assistance Program	\$11	\$14	\$16	\$10	\$13	\$15
76% or more of participant's enrollment served by the Child Care Assistance Program	\$12	\$15	\$17	\$11	\$14	\$16

(7) ~~(6)~~ A quality incentive award shall be:

- Awarded to the extent that funds are available; and
- Calculated and paid as follows:

1. A participating center's rating level and the percentage of enrolled children served by the Child Care Assistance Program shall be used to determine, according to the chart in subsection (5) of this section, the amount that shall be multiplied by the number of enrolled children who were served by the Child Care Assistance Program during the month in which the quality rating certificate was issued. The product of this equation shall be multiplied by twelve (12) and divided by four (4).

2. A quality incentive award shall be paid quarterly to a qualifying participant that has received a quality rating certificate by the first day of the payment quarter.

(8) ~~(7)~~ The percentage of children who are enrolled at a participating center and served by the Child Care Assistance Program shall be reviewed at the end of six (6) months. If the percentage of children served by the Child Care Assistance Program decreases, a quality incentive award shall be lowered according to the percentage of subsidy children served at the time of the six (6) month review.

(9) ~~(8)~~ If the percentage of children who are enrolled at a participating center and served by the Child Care Assistance Program increases, the quality incentive award shall be increased accordingly upon issuance of a renewed quality rating certificate.

Section 8. Renewal of a Quality Rating Certificate. (1) The Cabinet for Health Services shall notify a participant at least ninety (90) calendar days before expiration of the participant's quality rating certificate.

(2) A participant shall submit a written request to the Cabinet for Health Services for a quality rating visit at least sixty (60) calendar days prior to expiration of the quality rating certificate.

(3) If the Cabinet for Health Services determines that a participant does not meet the rating level standards for which the center is recognized, a center shall:

- Accept a lower rating level; or
- Submit a written request to the Cabinet for Health Services, within ten (10) calendar days from receipt of a reduced quality rating certificate, for an informal dispute resolution meeting. The request shall be accompanied by a request for an administrative hearing pursuant to KRS Chapter 13B. If an appellant party is satisfied with the outcome of the informal dispute resolution process, the administrative hearing shall be cancelled. Payment of a quality incentive award shall be held in abeyance pending resolution of appeal of a demoted rating level.

Section 9. Conditions Requiring Reevaluation. Reevaluation of a

participant's rating level shall be conducted:

- If the location of a licensed child care center changes;
- If the participant requests a reevaluation in accordance with Section 2(5) of this administrative regulation; or
- Within ninety (90) days of transfer of ownership, if a center continues participation under a provisional quality rating certificate.

Section 10. Conditions Requiring Revocation. (1) A participant's quality rating certificate shall be revoked for:

- Immediate closure pursuant to KRS 13B.125;
- Denial of relicensure;
- A pending suspension or revocation action taken against the child care center's license;
- ~~Extension of a provisional license beyond six (6) months, if a center participates under a provisional quality rating certificate;~~
- ~~(e)~~ Failure to comply with payment of a civil penalty levied against the center if:
  - The center waived the right to appeal the civil penalty; or
  - The civil penalty has been upheld on appeal; or
  - ~~(f)~~ Failure to comply with the requirements of 922 KAR 2:160.

(2) Payment of a quality incentive award shall cease upon revocation of a quality rating certificate.

Section 11. Quality Rating Certificate. A quality rating certificate shall be returned to the Cabinet for Health Services if:

- The certificate is revoked;
- The certificate is not renewed; or
- The center voluntarily withdraws from the program.

Section 12. Appeals. (1) If a participant appeals revocation of a quality rating certificate for a negative action described in Section 10(1)(a) through (c) of this administrative regulation, the quality rating appeal shall be combined with appeal of the negative action.

(2) If denial, suspension, or revocation of a child care center's license is reversed upon appeal, the center may reapply for participation in the program.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

- "Application for Level One (1) Rating Certificate", edition July 2001";
- "Level One (1) Standards", edition February 15, 2001"; and
- "STAR Rating Visit Request Form", edition July 2001".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Inspector General's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Fri-



day, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner  
HIREN DESAI, Attorney  
VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: May 13, 2002

FILED WITH LRC: May 15, 2002 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on June 21, 2002, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2002, 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: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (Fax).

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Shirley Eldridge, Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for implementation of the voluntary quality rating system for Type I licensed child care centers. This administrative regulation also sets forth the amount of each monetary incentive that will be awarded to a participant in the Stars for KIDS NOW Program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 199.8941 and 199.8943.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 199.8943, which requires the Cabinet for Families and Children to promulgate an administrative regulation that implements a voluntary quality-based graduated child care rating system for licensed child care centers; agency time frames for review of quality ratings; an appeals process under KRS Chapter 13B; and a process for the reevaluation of quality ratings. Additionally, this administrative regulation complies with KRS 199.8941, which requires development of a program of monetary incentives, to the extent that funds are available, tied to participation in the quality rating system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation complies with the statutory intent of KRS 199.8941 and 199.8943.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation is amended to allow level 1 participants in the STARS for KIDS NOW Program to receive a 1-time participation award, increases the amount of the 1-time start achievement award for level 3 and level 4 participants, and incorporates necessary policy clarifications recommended by various taskforces, committees, and other agencies.

(b) The necessity of the amendment to this administrative regulation: Creating a 1-time participation award and increasing the 1-time star achievement award for level 3 and level 4 participants, a greater incentive is provided to increase participation in the voluntary Stars for KIDS NOW program by type I licensed child care centers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to this administrative regulation complies with KRS 199.8941, requiring the development of a program of monetary incentives, to the extent that funds are available, tied to participation in the quality rating system.

(d) How the amendment will assist in the effective administration

of the statutes: Creating a 1-time participation award and increasing the 1-time star achievement award for level 3 and level 4 participants, a greater incentive is provided to increase participation in the voluntary Stars for KIDS NOW program by type I licensed child care centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Stars for KIDS NOW Program is a voluntary program. The intention of this administrative regulation is to promote the expansion of quality child care services and benefit Kentucky's children and families who utilize such services. Since this is not a mandatory program, there will be no negative impact on entities.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Voluntary participants in the Stars for KIDS NOW Program will receive, to the extent that funds are available, monetary incentives for participation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: First year: \$153,200

(b) On a continuing basis: Continuing cost of \$229,700 annually to the extent funds are available.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund (CCDF) and Phase I Tobacco Settlement dollars.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not establish fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Same as the response for item (7).

(9) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide.

NEW ADMINISTRATIVE REGULATIONS FILED AS OF NOON, MAY 15, 2002

**KENTUCKY TEACHERS' RETIREMENT SYSTEM**  
(New Administrative Regulation)

**102 KAR 1:260. Summary plan description.**

RELATES TO: KRS 161.580

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Kentucky Teachers' Retirement System to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.580 requires the Board of Trustees to prepare and furnish to all active contributing members a summary plan description and to annuitants so much of the summary plan description as they need to understand changes in benefits which apply to them. This administrative regulation establishes the method of providing the summary plan description to members and the timeframe in which the summary plan description will be furnished to new members.

Section 1. The summary plan description published in the form of a comprehensive booklet or in the form of periodic newsletters shall be mailed to the member's last known home address or in the case of an active member may be mailed individually to the member's work address.

Section 2. A comprehensive summary plan description shall be mailed to new members within six (6) months of receipt of a valid membership application.

VIRGINIA MURRELL, Chairperson

APPROVED BY AGENCY: May 10, 2002

FILED WITH LRC: May 15, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 2002, at 9 a.m. local time, in the Board Room of the main building of the Kentucky Teachers' Retirement System located at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 14, 2002, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written 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: Robert B. Barnes, General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Phone (502) 848-8500, Fax (502) 573-0199.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Robert B. Barnes, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the method of providing the summary plan description to members and the timeframe in which the summary plan description will be furnished to new members.

(b) The necessity of this administrative regulation: This regulation establishes the procedures for distributing the summary plan description to members. The summary plan description contains information regarding participation in the retirement system that is highly important to the membership.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.310 requires the Board of Trustees of the retirement system to promulgate regulations for the

transaction of business. The retirement system is in the business of providing retirement benefits to its membership and dissemination of information regarding the retirement system is critical to the membership so that they may participate in the retirement system in an informed manner and have the opportunity to make the best decisions in their own behalf.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will establish procedures for implementing the requirement of KRS 161.580 that the retirement system provide its membership with a summary plan description.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new regulation.

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All active members of the retirement system, approximately 52,000 persons, receive a summary plan description.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Active members would now have set forth in regulation the procedure for receipt of the summary plan description.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost as this regulation merely establishes procedures for the distribution of a summary plan description that is already being disseminated to the membership.

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? No. Tiering is not required as all active members of the retirement system will receive the summary plan description in the manner provided for by the regulation.

**KENTUCKY TEACHERS' RETIREMENT SYSTEM**  
(New Administrative Regulation)

**102 KAR 1:270. Statement of member account.**

RELATES TO: KRS 161.580

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Kentucky Teachers' Retirement System to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.580 requires the Board of Trustees to maintain an individual account for each member showing the amount of the member's contributions and accumulated interest. This administrative regulation establishes standards for the content and procedures for the distribution of annual statements of members' accounts.

Section 1. Each member shall be provided with an annual statement of his or her account. Each member's annual statement

shall contain the following information if applicable:

- (1) Date of birth;
- (2) Member identification;
- (3) Total service credit accrued or purchased through the end of each fiscal year or as of the employee's termination date;
- (4) Total member contribution and interest accumulation through the end of each fiscal year or as of the employee's termination date;
- (5) Final average salary used to determine benefits;
- (6) Benefit payable at normal retirement age; and
- (7) Date of eligibility for an unreduced benefit.

Section 2. Each member shall be mailed on an annual basis to his or her last known address a statement of his or her account. Additionally, letters reflecting account status shall be mailed to inactive members with vested benefits who request a refund of their accumulated contributions and interest. In addition to the information listed in Section 1 of this administrative regulation, the letter shall inform the member that refunding the account will result in the member forfeiting a retirement benefit to which the member would otherwise be entitled. Letters shall be mailed to each member's last known home address prior to payment of a refund of contributions.

VIRGINIA MURRELL, Chairperson

APPROVED BY AGENCY: May 10, 2002

FILED WITH LRC: May 15, 2002 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 2002, at 9 a.m. local time, in the Board Room of the main building of the Kentucky Teachers' Retirement System located at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 14, 2002, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written 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: Robert B. Barnes, General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Phone (502) 848-8500, Fax (502) 573-0199.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert B. Barnes, General Counsel

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes procedures for providing annual statements of account to members and specifies the content of these statements.
  - (b) The necessity of this administrative regulation: This regulation establishes the procedure for distributing the statements of account to members as well as specifies the content of these statements. The statements of account contain information regarding individual accounts with the retirement system that is highly important to the membership.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.310 requires the Board of Trustees of the retirement system to promulgate regulations for the transaction of business. The retirement system is in the business of providing retirement benefits to its membership and dissemination of information to each member regarding his or her individual account is important in aiding the member in assessing his or her status in the retirement system and the value of his or her account.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will establish procedures for implementing the requirement of KRS 161.580 that the retirement system maintain individual member accounts and the means of disseminating that information to the member.
- (2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of: This is a new regulation.

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All active members of the retirement system, approximately 52,000 persons, receive a statement of account.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Active members would now have set forth in regulation the procedure for receipt of a statement of account as well as specifics for the content of these statements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost as this regulation merely establishes procedures for the distribution of a statement of member account that is already being disseminated to the membership.

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? No. Tiering is not required as all active members of the retirement system will receive a statement of account in the manner provided for by the regulation.

#### JUSTICE CABINET Department of State Police (New Administrative Regulation)

#### 502 KAR 5:020. Code of ethics.

RELATES TO: KRS 11A.015, 16.080, 16.140

STATUTORY AUTHORITY: KRS 16.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.080 requires the Commissioner of the Department of State Police to adopt administrative regulations for the conduct of officers of the department. This administrative regulation adopts by administrative regulation the Kentucky State Police Code of Ethics.

Section 1. Code of Ethics. An officer of the Department of State Police shall comply with the requirements established in the Kentucky State Police Code of Ethics.

Section 2. Incorporation by Reference. (1) The "Kentucky State Police Code of Ethics", January 1, 2002, edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Custodian of Records, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

ISHMON F. BURKS, Commissioner

ELIZABETH D. BAKER, Legal Counsel

APPROVED BY AGENCY: January 28, 2002

FILED WITH LRC: April 25, 2002 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 26, 2002, at 9 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community Based Services**  
**Division of Policy Development**  
**(New Administrative Regulation)**

notify this agency in writing by June 19, 2002, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Elizabeth D. Baker, Legal Counsel, Department of State Police, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6318, fax (502) 573-1636.

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact person: Elizabeth D. Baker

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets forth the Code of Ethics followed by the Department of Kentucky State Police as it applies to all sworn personnel under KRS Chapter 16.

(b) The necessity of this administrative regulation: To codify the existing Code of Ethics established by the Commissioner of the Department of Kentucky State Police.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 16.080 requires the Commissioner of the Department of State Police to adopt regulations for the conduct of officers of the department. This administrative regulation adopts by administrative regulation the Kentucky State Police Code of Ethics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This will ensure compliance with KRS 16.080 which requires the Commissioner of the Department of State Police is required to adopt regulations for the conduct of officers of the department.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only those sworn personnel of the Department of State Police under KRS Chapter 16 will be affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This will constitute no change in the operation or conduct of the sworn personnel of the department as this code of ethics is already in place pursuant to directive of the commissioner of the department.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? Tiering is not appropriate as the regulation applies equally to all KRS Chapter 16 sworn personnel of the Department of State Police.

**922 KAR 2:210. Stars for KIDS NOW Program for family child care providers.**

RELATES TO: KRS 13B.125, 199.8941, 199.8943, 199.8982, 199.8992

STATUTORY AUTHORITY: KRS 199.8941(1), 199.8943(2)  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.8943(2) requires the Cabinet for Families and Children to promulgate an administrative regulation that implements a voluntary quality-based graduated child care rating system for family child care providers; agency time frames for review of quality ratings; an appeals process under KRS Chapter 13B; and a process for the reevaluation of quality ratings. KRS 199.8941(1) requires the Early Childhood Development Authority to develop a program of monetary incentives tied to participation in a quality rating system. This administrative regulation establishes criteria for implementation of the voluntary quality rating system for family child care providers and establishes the amount of each monetary incentive awarded to a participant in the Stars for KIDS NOW Program.

Section 1. Definitions. (1) "Commonwealth child care credential" means:

(a) Completion of sixty (60) clock hours of instruction from a state agency-approved organization;

(b) Includes training in the following areas:

1. Child growth and development;

2. Learning environments and curriculum;

3. Health, safety, and nutrition;

4. Family and community partnerships;

5. Child assessments;

6. Professional development;

7. Program management; and

(c) Shall be effective for a period of one (1) year and renewed upon completion of fifteen (15) hours of training.

(2) "Family child care provider" or "provider" means an individual:

(a) Certified to operate a family child day care home that meets the requirements of KRS 199.8982 and 922 KAR 2:100, Certification of family child day care homes; or

(b) Licensed to serve at least seven (7) but not more than twelve (12) children in a home or dwelling unit that is the full-time residence of the licensee.

(3) "Family Day Care Rating Scale (FDCRS)" means an environment rating scale conducted in a provider's home to assess quality.

(4) "Parental or family participation" means a child care provider's attempt to provide information or involve a parent or custodian in the provider's activities, such as:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar;

(c) A conference between the provider and a parent or custodian; or

(d) Other activity designed to engage a parent or custodian in the program's activities.

(5) "Program" or "Stars for KIDS NOW Program" means the voluntary quality-based graduated child care rating system.

(6) "Resource and referral agency" is described at KRS 199.8992(1).

(7) "State agency" means the:

(a) Cabinet for Health Services; or

(b) Cabinet for Families and Children.

Section 2. Application. (1) If an applicant seeks participation as a level one (1) provider:

(a) The applicant shall complete an "Application for Level One (1) Rating Certificate", incorporated by reference; and

(b) A resource and referral agency staff person shall verify on the "Level One (1) Standards", incorporated by reference, the provider's documented compliance with the level one (1) requirements

described in Section 3 of this administrative regulation.

(2) If an applicant seeks participation as a level two (2), three (3), or four (4) provider, the applicant shall obtain a "STAR Rating Visit Request Form", incorporated by reference, from a resource and referral agency. An individual certified to operate a family child day care home shall submit the completed form to the Cabinet for Families and Children and an individual licensed to operate a type II child day care home shall submit the completed form to the Cabinet for Health Services.

(3) Upon receipt of a properly-completed "STAR Rating Visit Request Form", the state agency shall:

(a) Schedule a prearranged rating visit within sixty (60) calendar days. During an initial and each subsequent rating visit, a FDCRS shall be completed; and

(b) Issue to the applicant, within sixty (60) calendar days from the date of the rating visit, a quality rating certificate that shall:

1. Be valid for the period of one (1) year; and

2. Specify the rating level representing a provider's compliance with the requirements of that level.

(4) A participant in the program may request, at least six (6) months after issuance of a quality rating certificate, another rating visit for the purpose of redetermining the provider's rating.

Section 3. Level One (1) Requirements. (1) If, after two (2) years of participation as a level one (1) provider, the provider has not achieved a rating level above level one (1), the certificate shall expire. The provider may reapply for participation six (6) months after expiration of the level one (1) quality rating certificate.

(2) A level one (1) participant shall:

(a) Post prominently in the home, and maintain compliance with the:

1. Capacity requirements established in 922 KAR 2:100 if the participant is a certified family child day care home provider; or

2. Following staff-to-child ratios if the participant is a licensed type II provider:

Type II child day care home	
Age of Children	Ratio
Birth to 1 year	1:5
1 to 2 years	1:6
2 to 3 years	1:10
3 and older	1:12

(b) If the participant is a:

1. Certified family child day care home provider, the provider shall comply with the requirements set forth in 922 KAR 2:100; or

2. Licensed type II provider, the provider shall comply with the requirements set forth in:

a. 922 KAR 2:090, Child care center licensure;

b. 922 KAR 2:110, Child care facility provider requirements; and

c. 922 KAR 2:120, Child care facility health and safety standards;

(c) Attend an overview of the program prior to program participation;

(d) Agree to a curriculum assessment in which the FDCRS shall be used under the following conditions:

1. The FDCRS shall be conducted by the provider with assistance from a resource and referral agency staff person within the first twelve (12) months of participation in the program;

2. Participation as a level one (1) provider shall not require achievement of a specific score on the FDCRS; and

3. Upon completion of the FDCRS during the second year of participation as a level one (1) provider, the provider shall develop a written plan, with assistance from a resource and referral agency staff person for improved performance in each area identified by the FDCRS as needing improvement;

(e) Post in a prominent area, the provider's:

1. Planned program of activities; and

2. Daily schedule;

(f) Coordinate at least one (1) annual activity involving parental or family participation;

(g) Maintain a written child care agreement with each child's parent or custodian, including the name of each person designated

by the parent to pick up the child;

(h) Maintain a written description of services that includes:

1. Current rates for child care;

2. Hours of operation;

3. A plan for daily communication with each child's parent or custodian; and

4. Policy regarding:

a. Late fees;

b. Holidays;

c. Vacation;

d. Illness; and

e. How an arrangement shall be made for an individual, other than one (1) previously designated by the parent, to pick up a child.

(i) Not have an immediate closure, denial of recertification or relicensure, or a pending suspension or revocation action against the provider's certificate or license to operate;

(j) In the case of a type II child day care home, pay any civil penalty levied against the provider if the:

1. Provider has waived the right to appeal a civil penalty; or

2. Civil penalty has been upheld on appeal;

(k) Comply with the requirements of 922 KAR 2:160, Child care assistance program; and

(l) In the case of a:

1. Certified family child day care home provider, develop and implement a plan for obtaining annual training required by KRS 199.8982(2); or

2. Licensed type II provider, develop and implement an annual plan for professional development for each employee, including the licensee.

Section 4. Level Two (2) Requirements. A level two (2) participant shall:

(1) Meet the requirements of Section 3(2)(a), (b), (c), (e), (g), (h), (i), (j), (k), and (l) of this administrative regulation;

(2) Coordinate at least two (2) annual activities that involve parental or family participation;

(3) Provide documentation of a written plan for parental or family involvement;

(4) Achieve an average score of at least three (3) on the FDCRS;

(5) If the provider achieves an average score of three (3) on the FDCRS, develop a written plan, with assistance from a resource and referral agency staff person for improved performance on subsequent rating scales;

(6) Achieve an average score of at least four (4) on the FDCRS by the fourth year of participation as a level two (2) participant;

(7) Maintain an overall average score of four (4) on the FDCRS for each year beyond the fourth year of participation as a level two (2) provider;

(8) Read to the children daily;

(9) Ensure that at least one (1) person is on duty who is certified in infant and child cardiopulmonary resuscitation and infant and child first aid;

(10) Meet the training requirement as follows:

(a) If the participant is a:

1. Certified family child day care home provider, complete three (3) clock hours of state agency-approved child development training annually, beyond the six (6) hour requirement specified in 922 KAR 2:100;

2. Type II child day care home, the licensee and each staff person shall complete three (3) clock hours of state agency-approved child development training annually, beyond the twelve (12) hour requirement specified in 922 KAR 2:110;

(b) Obtain a commonwealth child care credential;

(c) Have a child development associate's credential;

(d) After July 1, 2004, complete the family child care director's credential;

(e) Have a Montessori Certificate; or

(f) Have an associate or higher level of education in:

1. Interdisciplinary early childhood education;

2. Early childhood special education;

3. Early childhood education;

4. Early childhood development;

5. Elementary education for teaching kindergarten through



fourth grade, if the provider cares for school-age children; or

6. A related degree approved by the Early Childhood Development Authority;

(11) In the case of a type II child day care home, comply with the provisions of:

(a) 11 KAR 16:040, Early Childhood Development Scholarship Program recordkeeping requirements; and

(b) 11 KAR 16:060, Early Childhood Development Scholarship Program system of monetary incentives; and

(12) Provide proof that a recordkeeping system is maintained, including:

- (a) Documentation of child care business expenses; and
- (b) Income from the business.

Section 5. Level Three (3) Requirements. A level three (3) participant shall:

(1) In the case of a:

(a) Certified family child care home provider, have an assistant if the provider cares for six (6) or:

1. Fewer children and more than three (3) infants; or

2. More children and more than three (3) children under the age of twenty-four (24) months;

(b) Type II child day care home, meet the following staff-to-child ratios:

Age of Children	Ratio
Birth - 1 year	1:4
1 to 2 years	1:5
2 to 3 years	1:8
3 and older	1:12

(2) Meet the requirements of Section 3(2)(a), (b), (c), (e), (g), (h), (i), (j), (k), and (l) of this administrative regulation;

(3) Coordinate at least three (3) annual activities involving parental or family participation;

(4) Achieve an average score of at least 4.5 on the FDCRS;

(5) Achieve no less than a score of 5 on the FDCRS item pertaining to the use of television;

(6) Meet the requirements of Section 4(3), (8), (9), (11), and (12) of this administrative regulation;

(7) Provide each parent or custodian with a:

(a) Written daily report for a child under two (2) years of age; and

(b) Handbook containing a description of the provider's policies;

(8) Meet the training requirement as follows:

(a) A certified family child day care home provider shall:

1. Complete eighteen (18) clock hours of state agency-approved child development training annually; and

2. By the fourth year of participation in the program, have a:

a. High school diploma;

b. High school equivalency diploma; or

c. Higher level of education as specified in Section 4(10)(b), (c),

(d), (e), or (f) of this administrative regulation; and

(b) A type II child day care home licensee shall:

1. Ensure that each staff person completes eighteen (18) clock hours of state agency-approved child development training annually or has a higher level of education described in Section 4(10)(b), (c), (d), (e), or (f) of this administrative regulation; and

2. Complete twenty-one (21) clock hours of state agency-approved child development training annually or have a higher level of education as specified in Section 4(10)(b), (c), (d), (e), or (f) of this administrative regulation;

(9) Ensure that each assistant has:

(a) Attended basic orientation training; and

(b) Obtained three (3) hours of state agency-approved child development training annually.

Section 6. Level Four (4) Requirements. A level four (4) participant shall:

(1) In the case of a certified family child day care home provider, have a maximum capacity not to exceed nine (9) children;

(2) Meet the requirements of Section 3(2)(a), (b), (c), (e), (g), (h), (i), (j), (k), and (l) of this administrative regulation;

(3) Coordinate at least four (4) annual activities involving parental or family participation;

(4) Meet the requirements of Section 4(3), (8), (9), (11), and (12) of this administrative regulation;

(5) Meet the requirements of Section 5(1), (7), and (9) of this administrative regulation;

(6) Achieve an average score of at least 5.5 on the FDCRS;

(7) Be accredited by:

(a) The National Association for Family Child Care; or

(b) An organization approved by the Early Childhood Development Authority;

(8) Show proof of membership in an early childhood professional organization that has national, multi-state, regional, or statewide affiliation; and

(9) Meet the training requirement as follows:

(a) A provider shall:

1. Have a higher level of education as specified in Section 4(10)(b), (c), (d), (e), or (f) of this administrative regulation; and

2. After July 1, 2004, complete the family child care director's credential; and

(b) Each staff person employed by a type II child day care home shall complete twenty-one (21) clock hours of state agency-approved child development training annually or have a higher level of education as specified in Section 4(10)(b), (c), (d), (e), or (f) of this administrative regulation.

Section 7. Star Achievement and Quality Incentive Awards. (1) A one (1) time participation award of \$100 shall be awarded, to the extent that funds are available, to a provider who enters the program as a level one (1) participant.

(2) A one (1) time star achievement award shall be awarded, to the extent that funds are available, according to the following chart:

Level 2	Level 3	Level 4
\$250	\$500	\$1,000

(3) If a provider's initial rating level is higher than level two (2), the provider shall receive a star achievement award, to the extent that funds are available, for each level, beginning at level two (2), up to the provider's rating level. A provider shall not receive an award for a level more than one (1) time.

(4) A quality incentive award shall not be available to a level one (1) participant.

(5) The following chart shall be used when calculating the amount of a quality incentive award:

Star Level	Amount per month for each child served by the Child Care Assistance Program who is under age 3	Amount per month for each child served by the Child Care Assistance Program who is age 3 and over
Level 2	\$10	\$9
Level 3	\$13	\$12
Level 4	\$15	\$14

(6) A quality incentive award shall be:

(a) Awarded to the extent that funds are available; and

(b) Paid quarterly to a qualifying participant that has received a quality rating certificate.

Section 8. Renewal of a Quality Rating Certificate. (1) The state agency shall notify a participant at least ninety (90) calendar days before expiration of the participant's quality rating certificate.

(2) A participant shall submit a written request to the state agency for a quality rating visit at least sixty (60) calendar days prior to expiration of the quality rating certificate.

(3) If the state agency determines that a participant does not meet the rating level standards for which the center is recognized, a provider shall:

(a) Accept a lower rating level; or

(b) Submit a written request to the state agency, within ten (10) calendar days from receipt of a reduced quality rating certificate, for an informal dispute resolution meeting.

1. The request shall be accompanied by a request for an administrative hearing pursuant to KRS Chapter 13B.

2. If an appellant party is satisfied with the outcome of the informal dispute resolution process, the administrative hearing shall be cancelled.

3. Payment of a quality incentive award shall be held in abeyance.

ance pending resolution of appeal of a demoted rating level.

Section 9. Conditions Requiring Reevaluation. Reevaluation of a participant's rating level shall be conducted if the:

- (1) Location of a family child care provider changes; or
- (2) Participant requests a reevaluation in accordance with Section 2(4) of this administrative regulation.

Section 10. Conditions Requiring Revocation. (1) A participant's quality rating certificate shall be revoked for:

- (a) Immediate closure pursuant to KRS 13B.125;
- (b) Denial of recertification or relicensure;
- (c) A pending suspension or revocation action taken against the provider's certificate or license to operate;
- (d) Failure to comply with the requirements of 922 KAR 2:160; or
- (e) In the case of a type II child day care home, failure to comply with payment of a civil penalty if:
  1. The provider waived the right to appeal the civil penalty; or
  2. The civil penalty has been upheld on appeal.
- (2) Payment of a quality incentive award shall cease upon revocation of a quality rating certificate.

Section 11. Quality Rating Certificate. A quality rating certificate shall be returned to the state agency if:

- (1) The certificate is revoked;
- (2) The certificate is not renewed; or
- (3) The provider voluntarily withdraws from the program.

Section 12. Appeals. (1) If a participant appeals revocation of a quality rating certificate for a negative action as specified in Section 10(1)(a) through (c) of this administrative regulation, the quality rating appeal shall be combined with appeal of the negative action.

(2) If denial, suspension, or revocation of a provider's certificate or license to operate is reversed upon appeal, the provider may reapply for participation in the program.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Level One (1) Rating Certificate Certified Family Child Care Homes, edition July 2002";
- (b) "Application for Level One (1) Rating Certificate Licensed Type II Family Child Care Homes, edition July 2002";
- (c) "Level One (1) Standards, edition July 2002";
- (d) "STAR Rating Visit Request Form for Certified Family Child Care Homes, edition July 2002"; and
- (e) "STAR Rating Visit Request Form for Licensed Type II Family Child Care Homes, edition July 2002".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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

HIREN DESAI, Attorney

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: May 15, 2002

FILED WITH LRC: May 15, 2002 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on June 21, 2002, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2002, 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: Kellie Peace, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900,

(502) 564-9126 (Fax).

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Shirley Eldridge, Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for implementation of the voluntary quality based child-care rating system for family child care providers. The child-care rating system is known as the "Stars for KIDS NOW Program". This administrative regulation also establishes the amount of each monetary incentive awarded, to the extent funds are available, to a participant in the program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 199.8941 and 199.8943.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This new administrative regulation complies with KRS 199.8943, which requires the Cabinet for Families and Children to promulgate an administrative regulation that implements a voluntary quality-based graduated child-care rating system for licensed child-care and certified family child-care home providers; agency time frames for review of quality ratings; an appeals process under KRS Chapter 13B; and a process for the reevaluation of quality ratings. Additionally, this new administrative regulation complies with KRS 199.8941, which requires development of a program of monetary incentives, to the extent that funds are available, tied to participation in the quality rating system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This new administrative regulation complies with the statutory intent of KRS 199.8941 and 199.8943.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Stars for KIDS NOW Program is a voluntary program. The intent of this new administrative regulation is to promote the expansion of quality child care services and benefit Kentucky's children and families who utilize such services. Because this is not a mandatory program, there will be no negative impact on entities.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Voluntary participants in the Stars for KIDS NOW Program will receive, to the extent that funds are available, monetary incentives for participation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The total cost impact of this regulation is estimated to be \$351,000 for SFY 03.

(b) On a continuing basis: The total cost impact of this regulation is estimated to be \$476,700 for SFY 04.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund (CCDF) and Phase I Tobacco Settlement dollars.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not establish or increase fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Same as response for item 7.

(9) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of May 14, 2002

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 14, 2002 at 10:00 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 April 15, 2002 meeting were approved.

**Present were:**

**Members:** Representative John Arnold, Chairman; Senators Marshall Long; Joey Pendleton, Richard Roeding; Representatives Woody Allen, James Bruce and Jimmie Lee.

**LRC Staff:** Dave Nicholas, Karen Smith, Sarah Amburgey, Donna Little, Edna Lowery, Susan Wunderlich, and Ellen Steinberg.

**Guests:** Rosemary F. Center, Kentucky Registry of Election Finance; Mark A. Sipek, Personnel Board; Lloyd Vest, Board of Medical Licensure; Jack Damron, Brenda Priestley, Department of Corrections; Hollie Spade, Lou Amato, Transportation Cabinet; Mary Ellen Wiederwohl, Education Professional Standards Board; Tim Chancellor, Frederick Huggins, Chuck Stribling, Labor Cabinet; Marc A. Guilfoil, Rena Elswick, Bernard J. Hettel, Kentucky Racing Commission; Diane Fleming, William R. Whittedge, Mine Safety Review Commission; Philip Kremer, Cabinet for Health Services; Rhonda Tricker, Linda Lingle, Shirley Eldridge, Sharon L. Chisley, Mike Weinrauch, Stephanie Brammer-Barnes; Cheryl Bentley, B.J. Jacobs, Cliff Robey, Kathy Adams, Rosanne Barkley, Karen Doyle, Virginia Carrington, Hiren Desai, Cabinet for Families and Children; David Vance, Ambassador Capital Limousine, Gold Shield Limousine; Ronny Pryor, LifePoint Hospital.

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**Kentucky Registry of Election Finance: Practice and Procedure**

32 KAR 2:220 & E. Electronic reporting file format and test file compliance procedure. Rosemary Center, General Counsel, and Stephen Smith, Information Management Officer, represented the Department.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to delete superfluous language as required by KRS 13A.222(4)(a); and (2) the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

**Board of Medical Licensure**

201 KAR 9:310. Continuing medical education. Lloyd Vest, General Counsel, represented the Board.

In response to questions by Chairman Arnold, Mr. Vest stated that the Board required physicians to complete twenty hours of continuing medical education each year and to report their educational credits every three years.

This administrative regulation was amended as follows: Sections 1 to 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

**Justice Cabinet: Department of Corrections: Office of the Secretary**

501 KAR 6:130. Western Kentucky Correctional Complex. Jack Damron, Counsel, represented the Department.

In response to questions by Representative Lee, Mr. Damron stated that the Department had a central policy on inmate correspondence and censorship that applied statewide, including at Western Kentucky Correctional Complex. Individual prisons were allowed to generate supplemental policies regulating details such as time of mail posting and delivery. The Western Kentucky Correctional Complex's policy on inmate correspondence and censorship was amended to delete provisions that merely repeated provisions of the central policy.

This administrative regulation was amended as follows: (1) Sec-

tion 1 was amended to correct the date of the material incorporated by reference; and (2) various WKCC policies were amended to comply with the drafting requirements of KRS Chapter 13A.

**Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers**

601 KAR 1:040. Application for operating authority and registration of motor carriers. Hollie Spade, Office of General Counsel, and Lou Amato, Office of General Counsel, represented the Division.

In response to questions by Representative Lee, Ms. Spade stated that this administrative regulation was amended to define charter buses and to distinguish their regulatory requirements from those of limousines.

In response to questions by Senator Roeding, Ms. Spade stated that a statutory change would be required before the Department could exempt pick-up vehicles used by charter buses from regulatory requirements for limousines.

This administrative regulation was amended as follows: Section 6(2) was amended to clarify the requirements for a charter bus.

**Education Professional Standards Board**

704 KAR 20:210. Substitute teachers and emergency school personnel. Mary Ellen Wiederwohl represented the Board.

This administrative regulation was amended as follows: (1) Section 3 and Form TC-EN were amended to correct typographical errors; and (2) Section 4 was amended to comply with KRS 13A.2251.

704 KAR 20:770. Probationary certificate for middle school teachers. This administrative regulation was amended as follows: Sections 2 and 3 were amended to comply with the drafting requirements of KRS Chapter 13A.

**Kentucky Racing Commission: Harness Racing**

811 KAR 1:035. Claiming races. Bernie Hettel, Executive Director, Rena Elswick, and Mark Guilfoil represented the Commission.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation; and (2) Sections 1, 2, 3, 8, 9, and 11 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

811 KAR 1:125. Pari-mutuel rules. This administrative regulation was amended as follows: Sections 11 to 14 were amended to comply with the drafting requirements of KRS Chapter 13A.

811 KAR 1:215. Kentucky Standardbred Development Fund. This administrative regulation was amended as follows: Section 18(1)(b) was amended to include a reference to a 5/8 mile track.

811 KAR 1:225. Substance abuse by commission employees and licensees. This administrative regulation was amended as follows: Sections 2 and 6 to 8 were amended to comply with the drafting requirements of KRS Chapter 13A.

**Kentucky Mine Safety Review Commission**

825 KAR 1:020 & E. Administrative hearing procedures. Bill Whittedge, Commissioner, and Diane Fleming, General Counsel, represented the Commission.

This administrative regulation was amended as follows: Sections 7, 10, 11, 19, and 21 to 23 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

**Cabinet For Health Services: Department for Medicaid Services: Services**

907 KAR 1:015 & E. Payments for hospital outpatient services. Phil Kremer represented the Department.

In response to questions by Senator Roeding, Mr. Kremer stated that this administrative regulation established the method that state and county facilities could use to obtain partial federal reimbursement for their services. This method should help offset the Medicaid

budget deficit.

This administrative regulation was amended as follows: Sections 1 to 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

**Cabinet For Families And Children: Department of Community Based Services: Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

921 KAR 2:060. Delegation of power for oaths and affirmations. Karen Doyle and Rosanne Barkley represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to specify citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to include specific authorizing language.

**Food Stamp Program**

921 KAR 3:030. Application process. Karen Doyle and Rosanne Barkley represented the Department.

In response to questions from Senator Roeding, Ms. Barkley stated that federal law required the Department to include voter registration in the food stamp application process.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to specify citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to include specific authorizing language; and (3) Sections 1, 3, 4, 6, and 8 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

921 KAR 3:050. Claims and additional administrative provisions. In response to a question by Senator Roeding, Ms. Doyle stated that this administrative regulation established termination procedures for writing off old claims. These termination procedures did not produce a revenue loss for the state because they were used for very old claims that were no longer collectible.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to specify citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to include specific authorizing language; and (3) Sections 4 to 7, 10, and 11 were amended to specify federal statutory citations and to comply with the drafting and format requirements of KRS Chapter 13A.

921 KAR 3:060. Administrative disqualification hearings and penalties. In response to a question by Senator Roeding, Ms. Doyle stated that this administrative regulation was amended to provide the Department greater flexibility in resolving program violation claims. As amended, the Department could refer a claim to the Office of Inspector General for a financial recovery or the Office of the Attorney General for a criminal prosecution.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to delete a citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to include specific authorizing language; (3) Section 2 was amended to delete superfluous language as required by KRS 13A.222(4)(a); and (4) Sections 1 to 4, 6, and 9 to 11 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

**Protection and Permanency: Child Welfare**

922 KAR 1:300. Standards for child-caring facilities. Karen Doyle, Hiren Desai, Counsel, Kathy Adams, and B.J. Jacobs represented the Department.

In response to a question by Senator Roeding, Ms. Adams stated that the child-caring facilities utilized several safeguards to protect children at the facilities from physical or sexual abuse from other children at the facilities, including being notified of a child's history of abusive behavior, addressing the abusive behavior through individual treatment plans, and monitoring the sleeping arrangements of children at the facilities.

In response to questions from Representative Lee, Ms. Jacobs stated that the Cabinet's standards of practice required social workers to see each child involved in the kinship care program and the foster care program face to face on a monthly basis.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph and Section 1 were amended to delete a statutory reference; and (2) Sections 2 to 7 were amended to com-

ply with the drafting and format requirements of KRS Chapter 13A.

922 KAR 1:305. Licensure of child-caring facilities and child-placing agencies. This administrative regulation was amended as follows: (1) the RELATES TO paragraph and Section 1 were amended to correct statutory citations; (2) Sections 2, 3, and 7 were amended to replace language with reference to controlling statutes; and (3) Sections 2, 3, 4, 7, and 8 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

922 KAR 1:380. Standards for emergency shelter child-caring facilities. This administrative regulation was amended as follows: the RELATES TO paragraph and Sections 1 to 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

922 KAR 1:390. Standards for residential child-caring facilities. In response to questions by Representative Bruce, Mr. Desai stated that Fayette County was chosen to implement a pilot family residential treatment program because a facility there was already operating that type of program. The Department amended this administrative regulation to establish some regulatory guidance for that ongoing program.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct a statutory citation; (2) Section 1 was amended to clarify definitions; (3) Sections 3 to 7 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (4) Section 6(5) to (11) were amended to add safety requirements for a facility housing both children and adults.

**Day Care**

922 KAR 2:090 & E. Child care facility licensure. Stephanie Brammer-Barnes, Hiren Desai, Counsel, and Karen Doyle represented the Department.

This administrative regulation was amended as follows: (1) Sections 1, 2, and 5 were amended to delete provisions regarding provisional licenses as their statutory authority had been repealed; (2) Sections 2 and 5 were amended to: (a) delete provisions requiring volunteers to submit to criminal background checks to comply with KRS 17.165 and 199.896 which required only directors and employees to submit to those checks; (b) add provisions authorizing child care centers to request that volunteers voluntarily submit to background checks; and (c) add provisions prohibiting volunteers who do not submit to voluntary background checks from being alone and unsupervised with a child; (3) Section 3 was amended to establish an initial licensing fee as required by KRS 199.896(3); and (4) the Title, the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1, 2, 5, 6, and 7 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

**The Subcommittee determined that the following administrative regulations complied with statutory authority:**

**Personnel Board**

101 KAR 1:325. Probationary periods. Mark Sipek, General Counsel, represented the Board.

**Labor Cabinet: Occupational Safety and Health**

803 KAR 2:412 & E. Fall protection. Chuck Stribling, Safety Standards Specialist, Tim Chancellor, Health Standards Specialist, and Fred Huggins, Counsel, represented the Cabinet.

803 KAR 2:417 & E. Steel erection. In response to questions by Senator Roeding, Mr. Stribling stated that this administrative regulation incorporated by reference the federal steel erection standards except for the fall protection standard. At the request of the Standards Board, the Cabinet retained the Kentucky fall protection standard because it had been used by the construction industry since 1980.

**Kentucky Racing Commission: Harness Racing**

811 KAR 1:055. Declaration to start; drawing horses. Bernie Hettel, Executive Director, Rena Elswick, and Mark Guilfoil represented the Commission.

**The Subcommittee and the promulgating administrative agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:**

**Governor's Office: Telehealth Board**

10 KAR 3:040E. Establishing protocols and standards for telehealth network training centers and rural sites.

**Department Of Law: Office of the Attorney General: Racial Profiling**

40 KAR 7:010. Procedures for reporting allegations of racial profiling.

**Tourism Cabinet: Department of Fish and Wildlife Resources: Game**

301 KAR 2:140E. Requirements for wild turkey hunting.

301 KAR 2:142E. Spring wild turkey hunting.

**Department Of Agriculture: Livestock Sanitation**

302 KAR 20:110E. Treatment of imported mares.

302 KAR 20:140E. Breeding shed for female equines.

**Justice Cabinet: Department of Criminal Justice Training: Kentucky Law Enforcement Council**

503 KAR 1:110E. Department of Criminal Justice Training basic training: graduation requirements; records.

**Department of Insurance: Health Insurance Contracts**

806 KAR 17:081. Minimum standards for long-term care insurance policies.

**Kentucky Racing Commission: Harness Racing**

811 KAR 1:105. Review and appeal.

**Department of Housing, Buildings and Construction: Kentucky Building Code**

815 KAR 7:120E. Kentucky Building Code/2002.

815 KAR 7:125E. Kentucky Residential Code/2002.

**Plumbing**

815 KAR 20:020. Parts or materials list.

**Cabinet For Health Services: Department for Public Health: Health Services and Facilities**

902 KAR 20:016E. Hospitals; operations and services.

**Department for Medicaid Services: Services**

907 KAR 1:013E. Payments for hospital inpatient services.

907 KAR 1:025E. Payment for services provided by an intermediate care facility for the mentally retarded and developmentally disabled, a dually-licensed pediatric facility, an institution for mental diseases, a nursing facility with an all-inclusive rate unit.

907 KAR 1:030E. Home health agency services.

907 KAR 1:031E. Payments for home health services.

907 KAR 1:055E. Payments for primary care center, federally-qualified health center, and rural health clinic services.

907 KAR 1:081E. Repeal of 907 KAR 1:080.

907 KAR 1:170E. Payments for home and community based waiver services.

907 KAR 1:320E. Kentucky Patient Access and Care System (KenPAC).

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

**Payment and Services**

907 KAR 3:030E. Coverage and payments for IMPACT Plus services.

**Cabinet For Families And Children: Department of Community Based Services: Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

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

**Protection and Permanency: Child Welfare**

922 KAR 1:460. Standards for youth wilderness camps.

The Subcommittee adjourned at 10:45 a.m. until June 11, 2002, at 10 a.m. in Room 149 of the Capitol Annex.

**VOLUME 28, NUMBER 12 – JUNE 1, 2002**

**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.

**SENATE STANDING COMMITTEE ON  
HEALTH AND WELFARE  
HOUSE STANDING COMMITTEE ON  
HEALTH AND WELFARE  
Meeting of April 30, 2002**

The following administrative regulations were available for consideration by the Senate and House Standing Committees on Health and Welfare during its meeting of April 30, 2002, having been referred to the Committees on April 16, 2002, pursuant to KRS 13A.290(6):

906 KAR 1:120 & E  
907 KAR 1:660 & E  
907 KAR 1:810 & E  
908 KAR 3:050  
922 KAR 1:470 & E

The committees' activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the April 30, 2002 meeting, which are hereby incorporated by reference.



## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates .....L - 2

The Locator Index lists all administrative regulations published in VOLUME 28 of the Administrative Register from July, 2001 through June, 2002. 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 27 are those administrative regulations that were originally published in Volume 27 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2001 bound Volumes were published.

### KRS Index .....L - 18

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 28 of the Administrative Register.

### Subject Index .....L - 33

The Subject Index is a general index of administrative regulations published in VOLUME 28 of the Administrative Register, and is mainly broken down by agency.

# LOCATOR INDEX - EFFECTIVE DATES

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<b>VOLUME 27</b>					
The administrative regulations listed under VOLUME 27 are those administrative regulations that were originally published in Volume 27 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2001 bound Volumes were published.					
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>			202 KAR 7:461E	2364	2-15-2001
(Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)			Replaced		9-10-2001
			202 KAR 7:465E	2365	2-15-2001
			Replaced		9-10-2001
			202 KAR 7:491E	2367	2-15-2001
			Replaced		9-10-2001
10 KAR 4:020E	3053	3-28-2001	202 KAR 7:493E	2367	2-15-2001
Expired		10-18-2001	Replaced		9-10-2001
10 KAR 6:010E	3231	5-15-2001	202 KAR 7:495E	2369	2-15-2001
Replaced		10-17-2001	Replaced		9-10-2001
201 KAR 9:105E	2664	2-26-2001	202 KAR 7:497E	2370	2-15-2001
Expires		9-18-2001	Replaced		9-10-2001
202 KAR 7:030E	2323	2-15-2001	202 KAR 7:520E	2371	2-15-2001
Replaced		9-10-2001	Replaced		9-10-2001
202 KAR 7:050E	2324	2-15-2001	202 KAR 7:570E	2373	2-15-2001
Replaced		9-10-2001	Replaced		9-10-2001
202 KAR 7:060E	2326	2-15-2001	202 KAR 7:580E	2375	2-15-2001
Replaced		9-10-2001	Expired		9-17-2001
202 KAR 7:070E	2328	2-15-2001	202 KAR 7:582E	2382	2-15-2001
Replaced		9-10-2001	Replaced		9-10-2001
202 KAR 7:080E	2332	2-15-2001	202 KAR 7:584E	2386	2-15-2001
Replaced		9-10-2001	Replaced		9-10-2001
202 KAR 7:090E	2334	2-15-2001	202 KAR 7:590E	2391	2-15-2001
Replaced		9-10-2001	Replaced		9-10-2001
202 KAR 7:092E	2336	2-15-2001	202 KAR 7:595E	2395	2-15-2001
Replaced		9-10-2001	Replaced		9-10-2001
202 KAR 7:094E	2340	2-15-2001	704 KAR 3:500E	3058	4-12-2001
Replaced		9-10-2001	Expired		10-18-2001
202 KAR 7:100E	2344	2-15-2001	902 KAR 20:370E	2406	1-29-2001
Replaced		9-10-2001	Expired		8-18-2001
202 KAR 7:102E	2347	2-15-2001	907 KAR 1:145E	2672	2-15-2001
Replaced		9-10-2001	Expired		9-18-2001
202 KAR 7:110E	2349	2-15-2001	907 KAR 3:030E	3060	3-15-2001
Replaced		9-10-2001	Expired		10-18-2001
202 KAR 7:120E	2349	2-15-2001	907 KAR 3:160E	3068	4-2-2001
Withdrawn		8-3-2001	Expired		10-18-2001
202 KAR 7:130E	2350	2-15-2001	<b>ORDINARY ADMINISTRATIVE REGULATIONS</b>		
Expired		9-17-2001	2 KAR 2:010		
202 KAR 7:140E	2351	2-15-2001	Amended	3288	(See Volume 28)
Replaced		9-10-2001	2 KAR 2:040		
202 KAR 7:150E	2353	2-15-2001	Amended	3289	(See Volume 28)
Replaced		9-10-2001	10 KAR 3:020	3181	(See Volume 28)
202 KAR 7:160E	2354	2-15-2001	10 KAR 3:030	3182	(See Volume 28)
Replaced		9-10-2001	10 KAR 5:010	3388	(See Volume 28)
202 KAR 7:405E	2355	2-15-2001	11 KAR 16:010		
Replaced		9-10-2001	Amended	3318	(See Volume 28)
202 KAR 7:407E	2356	2-15-2001	20 KAR 2:040	2942	(See Volume 28)
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202 KAR 7:409E	2357	2-15-2001	Amended	3129	(See Volume 28)
Replaced		9-10-2001	40 KAR 2:270	3183	(See Volume 28)
202 KAR 7:413E	2359	2-15-2001	102 KAR 1:220		
Replaced		9-10-2001	Amended	3320	(See Volume 28)
202 KAR 7:426E	2360	2-15-2001	103 KAR 28:140	3390	(See Volume 28)
Replaced		9-10-2001	200 KAR 24:020	3186	(See Volume 28)
202 KAR 7:433E	2361	2-15-2001	201 KAR 5:010		
Replaced		9-10-2001	Amended	2865	(See Volume 28)
202 KAR 7:435E	2362	2-15-2001	201 KAR 5:030		
Replaced		9-10-2001	Amended	2866	(See Volume 28)
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Replaced		9-10-2001			



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201 KAR 5:040			301 KAR 2:049		
Amended	2869	(See Volume 28)	Amended	3138	(See Volume 28)
201 KAR 17:027			301 KAR 2:050		
Amended	3321	(See Volume 28)	Amended	3333	(See Volume 28)
201 KAR 17:030			301 KAR 2:132		
Amended	3323	(See Volume 28)	Amended	3140	(See Volume 28)
201 KAR 17:090			301 KAR 2:142		
Amended	3324	9-10-2001	Amended	3335	(See Volume 28)
201 KAR 18:102	3187	(See Volume 28)	301 KAR 2:178		
201 KAR 29:010			Amended	3336	(See Volume 28)
Amended	3130	(See Volume 28)	301 KAR 2:179		
201 KAR 29:020			Amended	3146	(See Volume 28)
Amended	3131	(See Volume 28)	301 KAR 2:222		
201 KAR 29:030			Amended	3149	(See Volume 28)
Amended	3132	(See Volume 28)	301 KAR 2:251		
201 KAR 29:050			Amended	3340	(See Volume 28)
Amended	3135	(See Volume 28)	301 KAR 3:010		
201 KAR 33:015	3391	(See Volume 28)	Amended	3152	(See Volume 28)
201 KAR 33:050	3392	12-19-2001	301 KAR 3:022		
201 KAR 33:060	3393	(See Volume 28)	Amended	3342	(See Volume 28)
202 KAR 7:030	3394	(See Volume 28)	301 KAR 3:040	3468	(See Volume 28)
202 KAR 7:050	3395	(See Volume 28)	301 KAR 4:010		
202 KAR 7:060	3397	(See Volume 28)	Amended	3345	(See Volume 28)
202 KAR 7:070	3398	(See Volume 28)	307 KAR 2:021	3469	(See Volume 28)
202 KAR 7:080	3401	(See Volume 28)	401 KAR 51:001		
202 KAR 7:090	3403	(See Volume 28)	Amended	2557	
202 KAR 7:092	3406	(See Volume 28)	Amended	3270	(See Volume 28)
202 KAR 7:094	3410	(See Volume 28)	401 KAR 51:160	2606	
202 KAR 7:100	3413	(See Volume 28)	Amended	3276	(See Volume 28)
202 KAR 7:102	3416	(See Volume 28)	401 KAR 51:180	2611	
202 KAR 7:110	3418	(See Volume 28)	Amended	3283	(See Volume 28)
202 KAR 7:130	3419		401 KAR 51:200		
Withdrawn		9-28-2001	Amended	2876	(See Volume 28)
202 KAR 7:140	3420	(See Volume 28)	402 KAR 3:030		
202 KAR 7:150	3422	(See Volume 28)	Amended	3154	(See Volume 28)
202 KAR 7:160	3423	(See Volume 28)	500 KAR 12:010	2271	(See Volume 28)
202 KAR 7:405	3424	(See Volume 28)	501 KAR 1:030		
202 KAR 7:407	3425	(See Volume 28)	Amended	3347	(See Volume 28)
202 KAR 7:409	3426	(See Volume 28)	501 KAR 1:040		
202 KAR 7:413	3427	(See Volume 28)	Amended	3351	(See Volume 28)
202 KAR 7:426	3428	(See Volume 28)	501 KAR 6:020		
202 KAR 7:433	3429	(See Volume 28)	Amended	3354	(See Volume 28)
202 KAR 7:435	3430	(See Volume 28)	501 KAR 6:999		
202 KAR 7:436	3431	(See Volume 28)	Amended	3155	(See Volume 28)
202 KAR 7:461	3432	(See Volume 28)	704 KAR 20:690		
202 KAR 7:465	3433	(See Volume 28)	Amended	3158	(See Volume 28)
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202 KAR 7:495	3436	(See Volume 28)	785 KAR 1:120	3471	(See Volume 28)
202 KAR 7:497	3437	(See Volume 28)	787 KAR 1:230		
202 KAR 7:520	3438	(See Volume 28)	Amended	3161	(See Volume 28)
202 KAR 7:570	3440	(See Volume 28)	804 KAR 4:360	3473	(See Volume 28)
202 KAR 7:580	3442	(See Volume 28)	806 KAR 9:310	3190	(See Volume 28)
202 KAR 7:582	3448	(See Volume 28)	806 KAR 9:320	3192	(See Volume 28)
202 KAR 7:584	3452	(See Volume 28)	806 KAR 9:330	3193	(See Volume 28)
202 KAR 7:590	3457	(See Volume 28)	806 KAR 15:041	3195	(See Volume 28)
202 KAR 7:595	3462	(See Volume 28)	806 KAR 15:050	3196	(See Volume 28)
300 KAR 2:030	3466	(See Volume 28)	815 KAR 7:120	3474	(See Volume 28)
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Amended	3326	(See Volume 28)	Amended	3371	(See Volume 28)
301 KAR 1:019	3467	(See Volume 28)	815 KAR 20:020		
301 KAR 1:115			Amended	3163	(See Volume 28)
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			Amended	3166	(See Volume 28)



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902 KAR 20:008			Amended	2914	(See Volume 28)
Amended	3166	(See Volume 28)	921 KAR 3:030		
902 KAR 20:370	3479	(See Volume 28)	Amended	2918	(See Volume 28)
902 KAR 105:020			921 KAR 3:050		
Amended	3384	(See Volume 28)	Amended	2920	(See Volume 28)
907 KAR 1:021			922 KAR 1:181	3481	8-15-2001
Amended	2908	(See Volume 28)	922 KAR 2:110		
907 KAR 1:160			Amended	2929	(See Volume 28)
Amended	3170	(See Volume 28)	922 KAR 2:120		
908 KAR 3:050			Amended	2932	(See Volume 28)
Amended	3386	(See Volume 28)	922 KAR 2:170	3482	(See Volume 28)
921 KAR 2:015			922 KAR 5:110	2981	(See Volume 28)
Amended	3175	(See Volume 28)	*Statement of Consideration Not Filed by Deadline		
			**Found deficient by legislative committee		

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<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b>			201 KAR 26:130E	824	8-23-2001
(Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)			Replaced	1802	2-7-2002
			201 KAR 26:145E	826	8-23-2001
			Replaced	1805	2-7-2002
10 KAR 3:040E	1319	11-5-2001	201 KAR 26:155E	828	8-23-2001
10 KAR 7:010E	31	6-13-2001	Replaced	1807	2-7-2002
Replaced	1342	12-19-2001	201 KAR 26:160E	830	8-23-2001
30 KAR 5:010E	263	7-2-2001	Replaced	1809	2-7-2002
Replaced	1344	12-19-2001	201 KAR 26:171E	831	8-23-2001
30 KAR 5:020E	264	7-2-2001	Replaced	1809	2-7-2002
Replaced	1344	12-19-2001	201 KAR 26:185E	834	8-23-2001
30 KAR 5:030E	265	7-2-2001	Replaced	1813	2-7-2002
Replaced	1345	12-19-2001	201 KAR 26:190E	835	8-23-2001
30 KAR 5:040E	266	7-2-2001	Replaced	1814	2-7-2002
Replaced	1346	12-19-2001	201 KAR 26:210E	837	8-23-2001
30 KAR 5:050E	268	7-2-2001	Replaced	1816	2-7-2002
Replaced	1348	12-19-2001	201 KAR 26:230E	838	8-23-2001
30 KAR 5:060E	269	7-2-2001	Replaced	1817	2-7-2002
Replaced	1348	12-19-2001	201 KAR 26:250E	841	8-23-2001
32 KAR 2:220E	1980	2-11-2002	Replaced	1819	2-7-2002
40 KAR 2:001E	2529	5-14-2002	201 KAR 26:270E	842	8-23-2001
40 KAR 2:075E	2317	3-26-2002	Replaced	1819	2-7-2002
Withdrawn		5-14-2002	201 KAR 26:280E	843	8-23-2001
Resubmitted	2530	5-14-2002	Replaced	1820	2-7-2002
40 KAR 2:076E	2532	5-14-2002	201 KAR 26:290E	844	8-23-2001
105 KAR 1:150E	1320	10-15-2001	Replaced	1820	2-7-2002
Replaced	2325	5-16-2002	201 KAR 26:300E	845	8-23-2001
105 KAR 1:310E	270	6-21-2001	Replaced	1821	2-7-2002
Replaced	1002	12-19-2001	202 KAR 6:070E	36	6-15-2001
200 KAR 17:080E	1581	12-5-2001	Expired		12-19-2001
Replaced	2326	5-16-2002	202 KAR 7:010E	1081	10-11-2001
201 KAR 20:070E	33	5-21-2001	Replaced	2016	3-14-2002
Replaced	1114	10-17-2001	301 KAR 2:140E	1981	1-24-2002
201 KAR 20:110E	34	5-21-2001	301 KAR 2:142E	1982	1-18-2002
Replaced	677	10-17-2001	301 KAR 2:221E	1582	11-21-2001
201 KAR 20:470E	272	6-21-2001	Replaced	1907	4-15-2002
Replaced	1115	10-17-2001	301 KAR 2:222E	1584	11-21-2001
201 KAR 26:125E	823	8-23-2001	Replaced	1909	4-15-2002
Replaced	1802	2-7-2002	301 KAR 2:225E	846	8-22-2001
			Replaced	2017	3-18-2002
			301 KAR 3:026E	1082	9-28-2001
			Replaced	1912	4-15-2002



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302 KAR 20:110E	1984	2-4-2002	Died*		3-27-2002
302 KAR 20:140E	1986	2-4-2002	*(HB 728, 2002 GA)		
302 KAR 20:250E	2534	5-15-2002	907 KAR 1:025E	303	6-28-2001
503 KAR 1:110E	1588	12-10-2001	Withdrawn		1-17-2002
503 KAR 1:150E	38	6-8-2001	Resubmitted	2000	1-17-2002
Withdrawn		12-3-2001	907 KAR 1:030E	1590	11-19-2001
503 KAR 3:060E	40	6-8-2001	907 KAR 1:031E	308	6-27-2001
Withdrawn		12-3-2001	Withdrawn		1-17-2002
503 KAR 4:010E	2170	3-8-2002	Resubmitted	2005	1-17-2002
Withdrawn		4-22-2002	907 KAR 1:038E	312	6-28-2001
503 KAR 4:020E	2171	3-8-2002	Replaced	1404	12-19-2001
Withdrawn		4-22-2002	907 KAR 1:055E	1593	11-30-2001
503 KAR 4:030E	2172	3-8-2002	907 KAR 1:065E	313	6-29-2001
Withdrawn		4-22-2002	Replaced	1405	12-19-2001
503 KAR 4:040E	2173	3-8-2002	907 KAR 1:072E	319	6-28-2001
Withdrawn		4-22-2002	Replaced	953	12-19-2001
503 KAR 4:050E	2174	3-8-2002	907 KAR 1:081E	1596	11-30-2001
Withdrawn		4-22-2002	Expires		6-20-2002
503 KAR 4:070E	2176	3-8-2002	907 KAR 1:092E	320	6-28-2001
Withdrawn		4-22-2002	Replaced	954	12-19-2001
725 KAR 2:015E	276	6-27-2001	907 KAR 1:145E	1097	10-10-2001
Replaced	1390	12-5-2001	Withdrawn		4-16-2002
803 KAR 2:180E	1322	11-14-2001	Resubmitted	2563	4-16-2002
Replaced	2206	4-15-2002	907 KAR 1:155E	322	6-28-2001
803 KAR 2:320E	45	6-15-2001	Replaced	1412	12-19-2001
Replaced	1131	11-12-2001	907 KAR 1:170E	327	6-27-2001
803 KAR 2:412E	1987	1-16-2002	Withdrawn		1-17-2002
803 KAR 2:417E	1989	1-16-2002	Resubmitted	2009	1-17-2002
803 KAR 25:010E	2536	4-18-2002	907 KAR 1:320E	542	7-23-2001
806 KAR 3:210E	281	6-27-2001	Expired		2-18-2002
Expired		1-18-2002	Resubmitted	2181	2-18-2002
806 KAR 3:220E	289	6-27-2001	907 KAR 1:360E	330	6-29-2001
Expired		1-18-2002	Replaced	961	12-19-2001
806 KAR 17:180E	291	7-13-2001	907 KAR 1:626E	331	6-28-2001
Replaced	1648	1-14-2002	Replaced	962	12-19-2001
806 KAR 17:211E	1326	11-5-2001	907 KAR 1:640E	50	6-7-2001
Expired		5-20-2002	Replaced	965	12-19-2001
807 KAR 5:100E	2546	4-25-2002	907 KAR 1:645E	53	6-7-2001
807 KAR 5:110E	2547	4-25-2002	Replaced	1416	12-19-2001
815 KAR 7:120E	1770	1-3-2002	907 KAR 1:655E	55	6-7-2001
Withdrawn		3-15-2002	Replaced	1417	12-19-2001
Resubmitted	2177	3-15-2002	907 KAR 1:660E	1597	11-30-2001
815 KAR 7:125E	1772	1-3-2002	Replaced	2353	4-30-2002
Withdrawn		3-15-2002	907 KAR 1:665E	59	6-7-2001
Resubmitted	2179	3-15-2002	Replaced	1420	12-19-2001
825 KAR 1:020E	848	9-13-2001	907 KAR 1:720E	2013	2-4-2002
902 KAR 17:041E	541	7-16-2001	907 KAR 1:810E	1327	11-2-2001
Withdrawn		3-19-2002	Replaced	2355	4-30-2002
Resubmitted	2320	3-19-2002	907 KAR 3:010E	334	6-28-2001
902 KAR 20:016E	1991	2-4-2002	Replaced	985	12-19-2001
902 KAR 20:380E	2549	5-7-2002	907 KAR 3:030E	1328	10-19-2001
906 KAR 1:120E	1083	10-15-2001	907 KAR 3:090E	547	8-7-2001
Expired		4-20-2002	Replaced	1878	2-7-2002
907 KAR 1:013E	294	6-29-2001	907 KAR 3:100E	336	6-29-2001
Withdrawn		1-9-2002	Replaced	987	12-19-2001
Resubmitted	1774	1-9-2002	907 KAR 3:170E	338	7-13-2001
907 KAR 1:015E	302	6-19-2001	Replaced	1430	12-19-2001
Replaced	1404	12-19-2001	921 KAR 2:015E	1783	12-28-2001
Resubmitted	1782	1-9-2002	921 KAR 3:020E	340	6-29-2001
907 KAR 1:018E	2321	3-29-2002	Replaced	1663	1-14-2002
907 KAR 1:019E	1085	10-15-2001	921 KAR 3:025E	61	6-1-2001
Withdrawn		4-19-2002	Replaced	1432	12-19-2001
Resubmitted	2554	4-19-2002	922 KAR 1:450E	345	6-21-2001
			Replaced	1667	1-14-2002



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Replaced	2357	4-30-2002	Amended	124	
922 KAR 2:090E	1338	11-1-2001	As Amended	552	9-5-2001
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>			20 KAR 1:090	994	
2 KAR 2:010			As Amended	1344	12-19-2001
As Amended	347	8-15-2001	20 KAR 2:040		
2 KAR 2:040			As Amended	348	8-15-2001
As Amended	347	8-15-2001	30 KAR 4:010		
10 KAR 3:020			Repealed	994	12-19-2001
As Amended	65	7-16-2001	30 KAR 4:011	994	12-19-2001
10 KAR 3:030			30 KAR 5:010	995	
As Amended	65	7-16-2001	As Amended	1344	12-19-2001
10 KAR 5:010			30 KAR 5:020	996	
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