ARRS - APRIL 2004 TENTATIVE AGENDA ...........................................2127
REGULATION REVIEW PROCEDURE ...........................................2129

EMERGENCIES:
Finance and Administration Cabinet ...........................................2130
Board of Massage Therapists ....................................................2132

AS AMENDED:
State Board of Elections ............................................................2134
EPPC, Division of Water ............................................................2135
Transportation Cabinet .............................................................2143
EPPC, Charitable Gaming ...........................................................2154
Cabinet for Health and Family Services .......................................2160

AMENDED AFTER COMMENTS: NONE

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MARCH 15, 2004:
State Board of Elections ............................................................2171
Finance and Administration Cabinet ...........................................2172
Board of Occupational Therapy ..................................................2173
EPPC, Division for Air Quality ...................................................2176
Department of Corrections .........................................................2225
Department of State Police .........................................................2228
Transportation Cabinet .............................................................2233

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, MARCH 15, 2004:
Finance and Administration Cabinet .........................................2241
Board of Massage Therapists .....................................................2245
Department of State Police .........................................................2246
Transportation Cabinet .............................................................2246

MARCH 9, 2004 MINUTES OF THE ARRS ..................................2250
OTHER COMMITTEE REPORTS .................................................2252

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates ..................................................J - 2
KRS Index ..................................................................................J - 16
Subject Index .............................................................................J - 27

MEETING NOTICE
The Administrative Regulation Review Subcommittee is tenta-
tively scheduled to meet in April 2004. The meeting date will be
announced upon scheduling. See tentative agenda on pages
2127 - 2128 of this Administrative Register.
The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2003 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

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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:

<table>
<thead>
<tr>
<th>Title</th>
<th>Chapter</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>806</td>
<td>KAR</td>
<td>50:</td>
</tr>
<tr>
<td>Cabinet, Department, Board or Agency</td>
<td>Office, Division, or Major Function</td>
<td>Specific Regulation</td>
</tr>
</tbody>
</table>

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Department for Environmental Protection

Water Quality
Permits
Bond and Insurance Requirements
Inspection and Enforcement
Performance Standards for Surface Mining Activities
Performance Standards for Underground Mining Activities
Special Performance Standards
Areas Unsuitable for Mining

JUSTICE AND PUBLIC SAFETY CABINET
Breath Analysis Operators
Office of the Secretary
Candidate Selection

EDUCATION CABINET
Kentucky Board of Education

Office of Instruction
Mortgage Loan Companies and Mortgage Loan Brokers
Electrical Inspectors
Communicable Diseases

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health

- 2127 -
Medicaid Services
907 KAR 1:022 & E. Nursing facility and intermediate care facility for an individual with mental retardation or a developmental disability level of care criteria.

Department for Community Based Services
Protection and Permanency

Child Welfare
922 KAR 1:050. Approval of adoption assistance. (Amended After Comments) (Deferred from March)
922 KAR 1:310. Standards for child-placing agencies. (Amended After Comments) (Deferred from March)
922 KAR 1:320. Services appeals. (Deferred from January)
922 KAR 1:330. Child protective services. (Deferred from January)
922 KAR 1:350. Family preparation. (Amended After Comments) (Deferred from March)
922 KAR 1:480. Appeal of child abuse and neglect investigative findings. (Deferred from January)

Block Grants
922 KAR 3:020. Grant services and eligibility. (Deferred from March)
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 and Public Comment Period

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted for a 30 day period following publication.

The administrative regulation shall include: place, time, and date of hearing; the manner in which persons submit notification to attend the hearing and written comments; that notification shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by phone and letter, if the hearing is cancelled and no written comments are received. If the hearing is held or written comments are received, the administrative body shall file a statement of consideration with the Compiler within 15 days following the last day of the comment period.

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

After the public hearing and public comment period processes are completed, 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 30 days after being referred by LRC, whichever occurs first.
Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to save state funds through improved efficiencies in procuring commodities and services. During the budget shortfall impacting all state agencies, the implementation of reverse auctions in accordance with this administrative regulation is one (1) way to improve efficiency and realize savings. It is necessary to promulgate this administrative regulation on an emergency basis because state agencies have been directed to immediately take steps necessary to reduce spending and eliminate waste. The normal process for promulgation will take several months, costing the state money in reduced savings during that time. When used by other governmental entities, reverse auctions have resulted in savings of fifteen (15) to twenty (20) percent of historic costs. The extent of the budget shortfall necessitates immediately undertaking reverse auctions as a method of procurement for appropriate commodities and services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on February 17, 2004.

ERNIE FLETCHER, Governor
ROBERT B. RUDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(New Emergency Administrative Regulation)

200 KAR 5:370E. Multistep competitive sealed bidding.

RELATES TO: KRS 45A.080
STATUTORY AUTHORITY: KRS 45A.035
EFFECTIVE: February 17, 2004
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements a multistep bidding process under KRS 45A.080.

Section 1. Definitions. (1) "Acceptable" means the unpriced technical offer is compliant with technical specifications described in the solicitation.

(2) "Multistep sealed bidding" means a two (2) phase process consisting of a technical first phase composed of one (1) or more steps in which bidders may submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

(3) "Potentially acceptable" means the unpriced technical offer is materially compliant with the technical specifications described in the solicitation, thereby providing a reasonable expectation of being made acceptable by amendment to the offer. If the bidder does not amend the offer by the specified date, the offer shall be deemed unacceptable.

(4) "Prebid conference" means a meeting or discussion with the purchasing officer and an interested bidder.

(5) "Reverse auction" means a real-time, structured bidding process, usually lasting less than one (1) hour and taking place during a previously-scheduled time and Internet location, during which multiple suppliers, anonymous to each other, submit revised, lower bids to provide the solicited good or service.

(6) "Unacceptable" means the unpriced technical offer is not materially compliant with the technical specifications described in the solicitation to such an extent that there is no reasonable assurance that, by amendment, the offer will meet or exceed the specifications and other requirements.

Section 2. General Terms. (1) Except for the variations described in this administrative regulation, the provisions of 200 KAR 5:306 shall apply to multistep bidding.

(2) Reverse auctions may be used as a form of competitive bidding in a multistep bidding process, and as an alternative to sealed bidding if it is determined by the purchasing officer that it is in the best interest of the Commonwealth.

(3) A contract resulting from multistep bidding shall not be awarded for an amount greater than the price in an existing contract with the Commonwealth for a substantially similar good or service that was solicited through competitive sealed bids.

Section 3. Multistep Sealed Bidding. (1) The multistep sealed bidding method may be used if the procurement officer determines in writing that:
(a) Definite criteria exist for evaluation of technical proposals and more than one (1) technically-qualified source is expected to be available; or
(b) A reverse auction is in the best interest of the Commonwealth; and
(c) It will be advantageous to the purchasing agency:
1. To invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;
2. To conduct discussions for the purposes of facilitating understanding of the technical offer and, if appropriate, obtaining supplemental information, permitting amendments of technical offers, or amending the purchase description;
3. To accomplish paragraphs (a) and (b) of this subsection prior to soliciting priced bids; and
4. To award the contract to the responsive and responsible bidder providing the best value to the Commonwealth.

(2) Prebid conferences in multistep sealed bidding. Prior to the submission of unpriced technical offers, the procurement officer may conduct a prebid conference. If a reverse auction shall be part of Phase Two, the process shall be explained during the prebid conference. The issuing agency may respond to questions and concerns during the conference, but the official response from the issuing agency shall be in writing and shall be provided to all potential bidders who attended the prebid conference.

Section 4. Procedure for Phase One of Multistep Sealed Bidding. (1) Multistep sealed bidding shall be initiated by the issuance of a solicitation as required by KRS 45A.080 and FAP 111-35-00. The multistep solicitation shall state:
(a) That unpriced technical offers are requested;
(b) Whether price bids are to be submitted at the same time as unpriced technical offers or if a reverse auction shall be conducted. If a price bid is required with the unpriced technical offer, the price bids shall be submitted in a separate sealed envelope.
(c) That it is a multistep sealed bid procurement, and priced bids shall be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;
(d) The criteria to be used in the evaluation of the unpriced technical offers;
(e) That the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers in accordance with subsection (5) of this section;
(f) That bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data that are to remain confidential;
(g) That the good or service being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable; and
(h) The manner in which the second phase reverse auction shall be conducted, if applicable.

(2) Amendments to the solicitation. After receipt of unpriced technical offers, amendments to the solicitation shall be distributed only to bidders who submitted unpriced technical offers, and those bidders shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the solicitation shall be canceled in accordance with KRS 45A.105, and a new solicitation issued.

(3) Receipt and handling of unpriced technical offers. Unpriced technical offers shall be opened publicly, identifying only the name of the bidder. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the specified date and time. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder. Prior to Phase Two of the multistep bidding process, a technical offer shall be shown only to purchasing agency personnel and those involved in the selection process who have a legitimate interest in the offer.

(4) Evaluation of unpriced technical offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the solicitation. A bidder shall submit a technical offer in sufficient detail so as to substantially comply with the technical specifications of the solicitation. The unpriced technical offers shall be categorized as:

(a) Acceptable;
(b) Potentially acceptable; or
(c) Unacceptable.

(5) Discussion of unpriced technical offers.

(a) The procurement officer may hold a conference with all bidders at any time during the evaluation of the unpriced technical offers. The purchasing officer may discuss with bidders, including any subcontractor or supplier of goods or services, acceptable and potentially acceptable bidders. Discussions may be conducted for the purposes of facilitating understanding of technical offers and specifications and may include, but shall not be limited to:

1. Obtaining supplemental information;
2. Amendments to the technical offer;
3. Amendments to the solicitation; or
4. A potentially-acceptable offer being amended to become an acceptable offer.

(b) During the course of these discussions the procurement officer shall not disclose any information derived from one (1) unpriced technical offer to any other bidder. Once discussions have begun, any bidder who has not been notified that its offer has been found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. The procurement officer shall notify all bidders in writing when no additional supplemental information may be submitted.

(6) Technical evaluation. The evaluation of technical offers shall be in writing. If the solicitation is for computer hardware, software and related services, the purchasing agency shall comply with FAP 111-15-00(2). A written record shall be maintained and become a part of the file.

(7) The procurement officer may initiate Phase Two of the multistep bidding if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that there are not sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers, the procurement officer shall issue an amendment to the solicitation or engage in technical discussions as set forth in subsection (5) of this section.

(8) Notice of unacceptable unpriced technical offer. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file. If the procurement officer determines a bidder's unpriced technical offer to be unacceptable, the officer shall notify the bidder. A bidder whose technical offer is determined to be unacceptable shall not be allowed to amend or supplement the technical offer.

(9) Mistakes during multistep sealed bidding. Mistakes may be corrected or bids may be withdrawn during Phase One:

(a) Before unpriced technical offers are evaluated;
(b) After any discussions have commenced under subsection (5) above;
(c) If responding to any amendment of the solicitation; or
(d) In accordance with 200 KAR 5:306 and FAP 111-35-00.

Section 5. Procedure for Phase Two of Multistep Sealed Bidding. (1) Upon the completion of Phase One of the multistep bidding process, no public notice shall be required for Phase Two. The procurement officer shall either:

(a) Open price bids submitted in Phase One from bidders whose unpriced technical offers were found to be acceptable, if the offers have remained unchanged and the solicitation has not been amended;
(b) Invite each bidder whose technical offer was determined to be acceptable to submit a price bid; or
(c) Conduct a reverse auction.

(2) If in the best interest of the Commonwealth, the reverse auction shall be an open and interactive process where pricing is submitted, made public immediately, and bidders are given opportunity to submit revised, lower bids, until the bidding process is closed.

(3) The solicitation of price bids for a reverse auction shall establish a date and time for the beginning and close of the reverse auction. The closing date and time may be a fixed point in time or may remain dependent on a variable specified in the solicitation.

(4) (a) Following receipt of the first bid after the beginning of the reverse auction, the lowest bid price shall be posted electronically, and updated as other bidders submit bids.

(b) At any time before the closing date and time, a bidder may submit a lower bid.

(5) Mistakes during reverse auctions.

(a) Withdrawal. If a mistake in a bid is attributable to an error in judgment, the bid may not be withdrawn. If a mistake in a bid is inadvertent, withdrawal or correction may be permitted at the discretion of the procurement officer and to the extent it is not contrary to the interest of the purchasing agency or the fair treatment of other bidders. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn due to an inadvertent mistake after the closing date and time, the procurement officer shall determine in writing whether to:

1. Award the contract to the next lowest responsive vendor.
2. Cancel the solicitation;
3. Reopen Phase Two bidding to all bidders whose technical offers were determined acceptable during Phase One.

(b) If Phase Two bidding is reopened, the procurement office shall notify all other bidders whose technical offers were determined acceptable during Phase One of the new date and time for the beginning and close of Phase Two bidding.

(c) Confirmation of bid. If it appears from a review of the bid that a mistake has been made, the bidder shall be requested to confirm the bid. Situations in which confirmation shall be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in paragraph (a) of this subsection are met.

ROBERT B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 13, 2004
FILED WITH LRC: February 17, 2004, at 3 p.m.
CONTACT PERSON: Angela C. Robinson, Assistant General Counsel, Finance and Administration Cabinet, Room 374 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6690, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates policies and procedures for Common-
VOLUME 30, NUMBER 10 – April 1, 2004

wealth agencies to solicit commodities and services through a multistep competitive sealed bid process, which may include bidding during an online reverse auction. A reverse auction features a single buyer and multiple bidders, with the price falling from bid to bid. The reverse auction ends when no bidder is willing to offer a lower price within a designated period of time. A contract will be awarded to the bidder offering the Commonwealth the best value.

(b) The necessity of this administrative regulation: This new administrative regulation sets out the requirements and procedures for state agencies to solicit commodities and services using a multistep bidding process that consists of a technical first phase composed of one or more steps during which bidders may submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Finance and Administration Cabinet is required by KRS 45A.035 to promulgate administrative regulations governing procurement by state agencies. KRS 309.355(3) requires the board to establish reasonable fees for the licensure, renewal and reinstatement of massage therapists. This administrative regulation establishes the fees relating to massage therapy (MT) licensure.

Section 1. Fee Payments. (1) All fees established in Section 2 of this administrative regulation shall be:

(a) Made payable as required by KRS 309.356 to the State Treasury; and

(b) Paid by:

1. Cashier's check;
2. Certified check;
3. Money order; or
4. Personal check.

(2) A payment for an application fee that is incorrect shall be returned to the applicant and the application shall not be processed until the correct fee is received.

Section 2. Fees. (1) The fee for an initial massage therapist license shall be $125 paid according to the following schedule:

(a) Fifty ($50) dollars of the $125 shall be nonrefundable and due at the time of application.

(b) The remaining seventy-five ($75) dollar balance of the $125 fee shall be due at the time this license is approved.

(2) The biennial renewal fee for a massage therapist license shall be $100.

(3) Reinstatement fees.

(a) If a license is renewed within sixty (60) days of the date of reinstatement, the renewal fee shall be $150.

(b) If a license is renewed after sixty (60) days of the date of reinstatement, the renewal fee shall be $200.

(201 KAR 42:020E).

STATEMENT OF EMERGENCY

This new emergency administrative regulation establishes the

fees for licensure, renewal and reinstatement of massage therapists. This new emergency administrative regulation must be placed into effect immediately in order to comply with a deadline contained in the mandates of KRS Chapter 309. Application procedures must be enacted immediately to establish the fees for the application process for licensure by the board to begin and related grandfather provisions. This new emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on March 15, 2004.

DIVISION OF OCCUPATIONS AND PROFESSIONS
Board of Licensure for Massage Therapy
(New Emergency Administrative Regulation)

201 KAR 42:020E. Fees.

RELATES TO: KRS 309.357
STATUTORY AUTHORITY: KRS 309.355(3), 309.357
EFFECTIVE: March 15, 2004
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(3) requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.357 requires the board to establish reasonable fees for the licensure, renewal and reinstatement of massage therapists. This administrative regulation establishes the fees relating to massage therapy (MT) licensure.

(2) A payment for an application fee that is incorrect shall be returned to the applicant and the application shall not be posted until the correct fee is received.

Section 2. Fees. (1) The fee for an initial massage therapist license shall be $125 paid according to the following schedule:

(a) Fifty ($50) dollars of the $125 shall be nonrefundable and due at the time of application.

(b) The remaining seventy-five ($75) dollar balance of the $125 fee shall be due at the time this license is approved.

(2) The biennial renewal fee for a massage therapist license shall be $100.

(3) Reinstatement fees.

(a) If a license is renewed within sixty (60) days of the date of reinstatement, the renewal fee shall be $150.

(b) If a license is renewed after sixty (60) days of the date of reinstatement, the renewal fee shall be $200.

This is to certify that the Chair of the Kentucky State Board of Licensure for Massage Therapy has approved this administrative regulation prior to its filing by the Kentucky State Board of Licensure for Massage Therapy with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provisions of KRS 309.350 to 309.364.

THERESA M. CRISLER, Chair
APPROVED BY AGENCY: March 8, 2004
FILED WITH LRC: March 15, 2004 at 10 a.m.
CONTACT PERSON: Kristen Webb, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristen M. Webb, Executive Director
(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation
establishes the fees for initial licensure, renewal, and reinstatement for a massage therapist.

(b) The necessity of this administrative regulation: KRS 309.353(3) requires the Board of Licensure for Massage Therapy to carry out the provisions of licensure of massage therapists and KRS 309.357 requires the board to establish fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to the statutes by establishing all fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clearly delineates the amounts of all fees charged by the board and will reduce inquiries the board receives by placing the public on notice.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: N/A

(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: Individuals planning to practice massage therapy; approximately 3,031 individuals currently practicing massage therapy; approximately 1,000 students currently enrolled in schools of massage therapy; and educational programs that provide the required massage therapy training.

(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: Current and future massage therapists are given a mechanism for paying fees required under KRS 309.364. The administrative regulation and state requirements for licensure will be taught to students ensuring each candidate for licensure understands the required state law and fees necessary for licensure under KRS 309.357.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: Initial cost to implement this administrative regulation is of posting, printing, and mailing it as part of the total set of new administrative regulations for the practice of massage therapy. This administrative regulation provides for fees to be paid to the board and provides revenue. This revenue cannot be collected without printing costs of the two-page application.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of the funding to be used for implementation enforcement is the proposed licensing fees. Proposed initial licensing fee is $125. A 2002 Opinion Research Corporation (ORC) Caravan survey by Decision Diagnostics estimated 3,031 practicing massage therapists in Kentucky. An estimated 1,000 will apply for licensure in the first year, for a fund of $125,000. The majority is estimated to apply near the end of the grandfathering period, bringing another 2,000+ application fees for a second-year income of $250,000. It is to be noted that the assembly of this proposed administrative regulation presented no cost to the state prior to filing with the Regulations Compiler.

(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: KRS 309.357 mandates fees to license as a massage therapist. This new administrative regulation sets those new fees, and does not require any new funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish fees as required by KRS 309.357.

(9) TIERING: Is tiering applied? Tiering is applied only in cases where individuals pay late fees that are at a rate as specified in KRS 309.357(4), (5).
VOLUME 30, NUMBER 10 – April 1, 2004
ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulations Review Subcommittee
IJC = Interim Joint Committee

KENTUCKY STATE BOARD OF ELECTIONS
(As Amended at ARRS, March 9, 2004)

31 KAR 6:010. State-based administrative complaint procedure.

RELATES TO: KRS Chapter 13B, 117.015(1), 42 U.S.C. 15612 [15512]
STATUTORY AUTHORITY: KRS 117.015(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to properly carry out its duties in the administration of the election laws. The Help America Vote Act of 2002, 42 U.S.C. 15612 [15512], Pub.L. 107-252, Section 402(a), requires the establishment of a state-based administrative complaint procedures to remedy grievances in elections for federal offices. This administrative regulation establishes an administrative complaint procedure to remedy grievances in elections for federal offices.

Section 1. Definitions. (1) "Board" means the State Board of Elections or their designees as defined in KRS 117.015 and 117.025.

(2) "Complainant" means the person who files a complaint under this administrative regulation.

(3) "Federal election" means a primary, general, or special election at which a federal office appears on the ballot.

(4) "Presiding officer" means the person appointed by the board to conduct a hearing on a complaint.

(5) "Respondent" means any state or local election official whose actions are alleged, in a written complaint, to be in violation of Title III of the Help America Vote Act of 2002, 42 U.S.C. 15481.

(6) "State or local election official" means the Secretary of State, the State Board of Elections, a county clerk, a county board of elections, or any officer, agent, or appointee thereof.


Section 2. Applicability. This administrative regulation shall be applicable to elections for federal office.

Section 3. Complaint Process. (1) Any person who believes there has been a violation of any provision of Title III of the Act by any election official may file a written complaint with the board.

(2) All complaints shall:
   (a) Be limited to violations of the requirements placed upon the states by Title III, specifically:
      1. Standards for voting systems;
      2. Requirements for provisional voting and voting information; and
      3. Requirements for computerized statewide voter registration lists and for voters who register by mail.
   (b) Be in writing on the Complaint and Affidavit for Violation of Title III of the Help America Vote Act of 2002, [form prescried by the board] and signed by the complainant under oath or affirmation before an officer authorized to administer oaths.
   (c) Include the full name, address, and telephone number of the complainant.
   (d) Include a description of the alleged violation sufficient to apprise the board and the respondent of the nature and specifics of the complaint.
   (e) Be sent by mail or by delivery to the Offices of the State Board of Elections at 140 Walnut Street, Frankfort, Kentucky 40601.
   (f) Be filed within ninety (90) days of the alleged violation of Title III.

Section 4. Processing the Complaint and Response. (1) The board may refuse to accept a complaint if the complaint does not comply with the requirements of Section 3 of this administrative regulation, except the board shall dismiss a complaint that does not state on its face a violation of Title III.

(2) If a complaint does not comply with Section 3 of this administrative regulation the board shall, within three (3) days, send the complainant a notice explaining the areas of noncompliance in the complaint.

(3) If a complaint complies with Section 3 of this administrative regulation and states on its face a Title III violation, the board shall accept the complaint and the complaint shall be deemed filed on the date of receipt at the offices of the board.

(4) Upon receipt of a complaint, the board shall send a copy to the respondent along with a request for a response.

(5) The respondent shall send a response to the board within ten (10) days of the date the respondent received notice from the board of the filed complaint.

(6) Upon receipt of the respondent's response, the board shall within three (3) days, send the complainant a copy of the respondent's response and a notice explaining the complaint may be resolved informally by agreement of the parties or a hearing may be requested. The complainant shall have ten (10) days from the date the notice is received to request an informal resolution or a hearing.

(7) The executive director of the board shall be responsible for arranging the date, time and place for hearings.

(8) The board may consolidate multiple complaints into a single proceeding if feasible and if [where] the complaints arise out of the same fact situation and have common questions of law and facts.

(9) The board shall make a final determination of the complaint within ninety (90) days of the date the complaint is filed unless the complainant agrees in writing to an extension.

Section 5. Hearings. (1) Hearings shall be conducted in accordance with KRS Chapter 13B.

(2) Hearings shall be tape recorded and a transcript of the hearing shall not [no transcript of the hearing shall] be made except upon request of a party who shall bear the cost of transcription. Any other party may request a copy of the transcript at their own expense.

(3) Hearings may be held and testimony taken by teleconference or video conference with notice to the parties.

(4) If any party fails, without good cause, to attend the hearing, they may be held in default and have a determination made against them.

(5) All testimony shall be taken under oath or affirmation.

(6) The complainant shall have [has] the burden of proof.

Section 6. Final Determination. (1) If the presiding officer determines that there was a past, present, or potential violation of Title III, shall then the final determination shall set forth the facts of the violation, the specific violation of Title III, and provide a remedy.

(2) The remedy awarded shall be directed at the improvement of processes or procedures governed by Title III, consistent with federal and state law.

(3) The remedy provided shall not include money damages, costs, or attorney fees and shall be limited to bringing the election practice or election system complained of into compliance with Title III.

Section 7. Alternative Dispute Resolution. (1) If a final determination of a complaint is not made within ninety (90) days of the filing of the complaint and the complainant did not agree to an extension, then the complaint shall be referred to a review panel.
comprised of three (3) members of the board.
(2) The review panel shall issue a final determination on the complaint within sixty (60) days of the referral.
(3) The review panel shall make its determination on the record of the hearing conducted under this administrative regulation and shall not conduct any further proceedings.
(4) If the hearing was not conducted or completed, then the review panel shall conduct a hearing under this administrative regulation.

Section 8. Publication of Final Determinations. [(4)] All final determinations shall be posted on the internet homepage of the board, www.kyecs.com, and mailed/electro copy, and retained in the permanent archival records of the board by attaching to the minutes of the monthly meeting of the board for the month the final determination was issued.

Section 9. Incorporation by Reference. (1) Complaint and Affidavit for Violation of Title III of the Help America Vote Act of 2002,” SBE 21(12/03), is incorporated by reference [Complaint form for Title III Violations – SBE 21(12/03)].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Offices of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 p.m.

JOHN Y. BROWN III, Chair
APPROVED BY AGENCY: November 24, 2003
FILED WITH LRC: December 5, 2003
CONTACT PERSON: Mary Sue Helm, Executive Director, Kentucky Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100; fax (502) 573-4569.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended At ARRS, March 9, 2004)

401 KAR 5:005. Permits to construct, modify, or operate a facility.

RELATES TO: KRS 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110
STATUTORY AUTHORITY: KRS 224.01-110, 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation establishes [provides] administrative procedures for the issuance of permits for the construction, modification, and operation of facilities authorized under KRS Chapter 224 and establishes conditions for construction of facilities under this chapter. The administrative regulation also establishes a schedule of fees to recover the costs of issuance for certain classes of permits. There is no federal law or regulation relating to construction requirements for wastewater treatment plants or the operational requirements for no discharge operations, therefore this administrative regulation is not more stringent than the federal requirements. The operational permit requirements are contained in the KPDES administrative regulations in 401 KAR 5:050 through 5:080 which are the same as the federal requirements.

Section 1. Applicability. (1) This administrative regulation shall apply to owners and operators of facilities subject to the administrative regulations of this chapter.
(2) A No person shall not construct, modify, or operate a facility without having received a permit from the cabinet. A construction or modification permit shall not be [is not] required for maintenance replacement for components of an existing facility or for changes which do not affect the treatment processes of the facility, but shall be [is] required for replacement of an entire wastewater treatment plant (WWTP). The operational permit provisions of Section 27 this administrative regulation shall be satisfied by those facilities which have a valid KPDES permit issued pursuant to 401 KAR 5:050 to 401 KAR 5:080.
(3)(a) The following requirements shall apply to agricultural wastes handling systems, as defined by 401 KAR 5:002 [5:004]:
1. Agricultural wastes handling systems which convey, store, or treat manure from concentrated animal feeding operations as defined by 401 KAR 5:002 [5:004] shall:
a. Obtain a permit to construct or modify the facility, complying with only Sections 2, 24, 25, and 29(2)(h) and (l) of this administrative regulation;
and
b. Obtain a KPDES permit and comply with 401 KAR 5:026 through 5:080.
2. All other agricultural wastes handling systems shall obtain permits to construct, modify, or operate the facility pursuant to this administrative regulation complying with only Sections 2, 24, 25, 27, and 29(2)(e) through (g) of this administrative regulation, A KPDES [No-KPDES] permit shall not be required for these facilities.
(b) The following shall apply to industrial wastewater treatment plants (IWTPs) as defined by 401 KAR 5:002 [5:004]:
1. IWTPs with closed TCP systems shall obtain a KDNOP complying with only Sections 2, 25, 27, and 29(2)(e) through (g) of this administrative regulation and any other applicable standard or requirements of 401 KAR Chapter 5. A KPDES (No-KPDES) permit shall not be required for these facilities.
2. IWTPs with a discharge to the waters of the Commonwealth shall not be required to obtain a permit to construct or modify the facility. These facilities shall, however:
a. Comply with the “Five Mile Limit Policy” incorporated by reference in Section 29 of this administrative regulation;
b. Obtain a KPDES permit to discharge into the waters of the Commonwealth; and
c. Comply with all other requirements of 401 KAR Chapter 5.
3. Sewer lines which convey wastewater to IWTPs shall not be required to obtain a construction permit.
(c) The following requirements shall apply to WWTPs which collect, convey, or treat only storm water:
1. WWTPs which collect, convey, or treat only storm water and discharge into the waters of the Commonwealth shall not be required to obtain a permit to construct or modify the facility pursuant to this administrative regulation. These facilities shall, however, comply with 401 KAR 5:026 through 5:080. 401 KAR 5:080 further specifies when these facilities are required to obtain a KPDES permit.
2. WWTPs which collect, convey, or treat only storm water and do not discharge into the waters of the Commonwealth shall obtain an operational permit under this administrative regulation, complying with only Sections 2, 25, 27, and 29(2)(e) through (g) of this administrative regulation. A KPDES (No-KPDES) permit shall not be required for these facilities.

Section 2. Application Submittal. (1) An application to construct, modify, or operate a facility, or renew the operational permit for a facility shall be submitted on the following applicable forms, incorporated by reference in Section 29 of this administrative regulation, and shall include the applicable supporting information required by Section 3 of this administrative regulation, applicable fees required by Section 5 of this administrative regulation, and plans and specifications for the proposed construction or modification required by Section 6 of this administrative regulation.
(a) For construction of sewer line extensions, the applicant shall submit a completed Construction Permit Application for Sewer Line Extension, Form S-1, and a fee in accordance with Section 5 of this administrative regulation.
(b) For construction projects for WWTPs or IWTPs with sewer lines with a direct discharge, the applicant shall submit or shall have submitted the completed KPDES applications required by 401 KAR 5:060 and a completed Construction Permit Application for Wastewater Treatment Plant, Form W-1. The applicant shall also submit a construction permit fee in accordance with Section 5 of this administrative regulation and a KPDES permit fee in accordance with KRS 224.70-120.
(c) For WWTP construction projects without a discharge other than agricultural waste handling systems, the applicant shall submit a completed Construction Permit Application for Wastewater Treatment Plant, Form W-1, a completed Kentucky No Discharge Operational Permit Application, Form ND, and a construction permit fee in accordance with Section 5 of this administrative regulation.

(d) For operational permits or renewals of Kentucky No Discharge Operational Permits (KNDOPs) other than agricultural waste handling systems, the applicant shall submit a completed Kentucky No Discharge Operational Permit Application, Form ND.

(e) For construction, renewal, modification, or operation of agricultural waste handling systems, the applicant shall submit a completed Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B. For construction approvals, applicants shall also submit a completed Site Survey Request.

(f) For construction of minor modifications to a WWTP, the applicant shall submit a completed Construction Permit Application for Wastewater Treatment Plant and a fee in accordance with Section 5 of this administrative regulation.

(g) For WWTP construction projects with a discharge for an individual residence, the applicant shall submit a completed Construction Permit Application for Wastewater Treatment Plant, fee in accordance with Section 5 of this administrative regulation, and the completed KPDES applications required by 401 KAR 5:006.

(h) For operational permits or renewal of facility permits for publicly owned sewer systems which have at least 5,000 linear feet of sewer line and which discharge to a sewer system or a WWTP which is owned by another person, the applicant shall submit a completed Kentucky Inter-Municipal Operational Permit Application.

2. Signatures

(a) Applications and all reports required by the permits shall be signed by the responsible corporate officer or the person having primary responsibility for the overall operation of the facility. For a municipality, state, federal or other public agency, the signee shall be a principal executive officer or ranking elected official or the designee. An application or report may be signed by a duly authorized representative, if the authorization has been made in writing by the responsible person.

(b) Certification. Any person signing a document under paragraph (a) of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision. 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 known violations."

Section 3. Application; Supporting Information. The following items shall be submitted as a part of the application or with the application required by Section 2 of this administrative regulation, any applicable fee required by Section 5 of this administrative regulation, and the plans and specifications for the construction project required by Section 6 of this administrative regulation:

1. The applicant shall identify who will inspect and certify that the facility under construction conforms with the plans and specifications approved by the cabinet in accordance with this administrative regulation. Facilities designed by an engineer shall be inspected and certified by the engineer.

2. The applicant shall provide an estimate for the cost of the facility.

3. The applicant shall provide a USGS 7.5 minute topographic map with the proposed project identified.

4. The applicant shall provide an estimate, and the basis for the estimate, for the average daily flow added by the proposed project.

5. Closure plan.

(a) If an existing facility or a portion of a facility will be taken out of service, the applicant shall submit a closure plan discussing the following items:

1. How the facility will be constructed and the sewage will be diverted to the new construction without a bypass to a stream. If the bypass is unavoidable during construction, the applicant shall submit:

   a. An explanation of why construction cannot occur without the bypass;
   b. An estimate of the shortest duration for the construction to be completed;
   c. A description of all equipment, material, labor, and any other item necessary to complete the construction; and
   d. An estimate of when the necessary items for the construction will be on-site;

2. How the contents of the facility will be removed and properly disposed;

3. How the abandoned facility will be removed or filled and covered; and

4. How the abandoned sewers will be plugged and manholes filled and covered.

(b) If an existing WWTP discharge is eliminated, the owner of the WWTP shall submit a completed No Discharge Certification, incorporated by reference in Section 29 of this administrative regulation, within thirty (30) days after the elimination of the discharge.

6. Preliminary submittal. Applicants for WWTP construction permits may submit the following information prior to formal submittal of the construction application, to allow the applicant to receive a preliminary determination on the suitability of the proposed discharge location and preliminary effluent limits used in the design of the facility. If the information in this subsection is not submitted prior to the formal submittal, the information shall be submitted with the construction application. The preliminary determination shall be valid for up to one (1) year after issuance of the preliminary determination or until the issuance of the KPDES permit, whichever occurs first. The preliminary determination may be changed as a result of information presented during the public notice phase of the KPDES permitting procedure. The preliminary effluent limits are contingent upon the validity, accuracy, and completeness of the following information submitted by the applicant:

   a. A reproducible copy of a USGS 7.5 minute topographic map with the projected service area outlined, the proposed WWTP location, and the discharge point identified on the map;

   b. If a regional facility plan or water quality management plan is being or has been developed, a letter from the regional planning agency stating whether the applicant's project is compatible with the plan. The cabinet shall then make a final determination on the compatibility of the project with the plan;

   c. For a new or an expansion of an existing regional facility pursuant to 401 KAR 5:006, a regional facility plan or water quality management plan. The planning requirements of "Recommended Standards for Wastewater Facilities" ("Ten States' Standards"), incorporated by reference in Section 29 of this administrative regulation, shall be satisfied by the cabinet's approval of a regional facility plan or a water quality management plan; and

   d. For WWTP projects, a demonstration that the users of the proposed WWTP cannot be served by an existing regional facility. The applicant shall demonstrate that a connection to a regional facility is not available. The applicant shall provide a detailed evaluation of alternatives by conducting a twenty (20) year present worth cost analysis. The distance criteria for determining availability shall not apply to WWTPs with an average daily design capacity less than or equal to 1,000 gpd.

7. For WWTP projects, the applicant shall submit the following design values:

   a. Average daily flow;
   b. Peak daily flow;
   c. Peak hourly flow;
   d. Influent BOD;
   e. Influent suspended solids; and
   f. Ammonium nitrogen (NH₃-N) of the influent.

8. For WWTP projects, if the discharge point of a proposed WWTP fails to coincide with a stream indicated as a blue line on a USGS 7.5 minute topographic map, the applicant shall demonstrate that the applicant has a recorded deed, recorded other right of ownership, or recorded right of easement to discharge the applicant's effluent across any land owner's property which comes between the point of discharge and a blue line stream.
(9) For WWTP projects, the applicant shall submit a copy of the plat or survey clearly indicating the property boundaries, the position of the proposed facility, and the position of the dwellings within 200 feet of the WWTP.

(10) For WWTP projects, the applicant shall provide a sludge management plan which includes the methods of sludge processing and ultimate sludge disposal.

(11) For WWTP projects, the applicant shall indicate that laboratory services shall be provided for self-monitoring and process control to ensure that the WWTP operation complies with the permit.

(12) For WWTP projects, the applicant shall submit:
(a) A schematic drawing of the WWTP layout and detailed explanation of the proposed facility and its method of operation;
(b) The WWTP's reliability category and a demonstration of how the WWTP complies with the reliability requirements in Section 13 of this administrative regulation; and
(c) The design criteria used to size the unit processes.

Section 4. Application; Preliminary Considerations. (1) A [No] permit shall be granted to any facility which is not compatible, as determined by the cabinet, with a regional facility plan or with a water quality management plan approved by the cabinet or the U.S. EPA.

(2) A WWTP which serves an individual residence may be located within 200 feet of the dwelling that it serves. An open-top WWTP may be located within 200 feet of any other dwelling where the WWTP does not serve, only if the WWTP is enclosed within a building which controls odors and dampens noise or the applicant demonstrates an equivalent method for noise and odor control will be provided.

(3) Any discharge point and direct discharges into a wellhead protection area shall comply with Water Policy Memorandum No. 84-02 (Five Mile Limit Policy), incorporated by reference in Section 29 of this administrative regulation.

(4) The initial suitability of any location for a proposed discharge point or spray irrigation field shall be determined by the cabinet after site inspection. In determining the suitability of the location, the cabinet may consider the distance to the nearest dwelling, distance to water intake used for a public water supply, downstream land use, physical characteristics and current use of the stream, physical characteristics of the proposed spray field including karst topography, need for easements, location of property boundaries, and other items consistent with this administrative regulation and KRS Chapter 224.

(5) If the discharge from the WWTP enters a sinkhole directly or enters a disappearing stream, the applicant shall submit a proposal for a groundwater tracer study or results from a previously conducted study to the cabinet for approval. The results of the groundwater tracer study shall be submitted to the cabinet for approval. The cabinet will review the results to determine if a discharge is acceptable.

(6) The cabinet may condition or deny a permit to construct or expand a facility based on its compatibility with a regional facility plan or the availability of a regional facility. Permits to construct, expand, or operate a sewage system shall require connection to a regional facility when one (1) becomes available and shall not be renewed, reissued, or modified to remove that requirement unless a regional facility is no longer available.

(7) Pursuant to 401 KAR 5:300, the cabinet may [will] coordinate issuance of a construction permit for WWTPs which require a new KPDES permit or modification to a KPDES permit with the issuance of the KPDES permit to ensure that public comments received as a result of the public notice requirements of 401 KAR 5:075 are considered in the issuance of the construction permit. The cabinet may [will] also coordinate issuance of construction approval for the associated sewer lines with the issuance of the construction permit for the WWTP. The cabinet may condition or deny the construction permit based on those public comments.

Section 5. Fees. (1) Except as specified in KRS 224.10-100, 224.16-050, and subsection (5) of this section, the applicant shall submit a construction permit fee as provided in subsection (4) of this section with the construction permit application and any applicable KPDES fee.

(2) If the cabinet denies a construction permit for a WWTP or sewer line, the fee for the construction permit shall be retained by the cabinet, unless the fee is for a WWTP which serves only an individual residence.

(3) The applicant shall make checks or money orders payable to the Kentucky State Treasurer.

(4) Construction permit fees shall be as shown on the following schedule, except as provided in subsection (5) of this section.

<table>
<thead>
<tr>
<th>Facility Category</th>
<th>Construction Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large Facility: WWTP</td>
<td>$1,800</td>
</tr>
<tr>
<td>Intermediate Facility: WWTP</td>
<td>$900</td>
</tr>
<tr>
<td>Small Facility: WWTP</td>
<td>$450</td>
</tr>
<tr>
<td>Minor Modification to a WWTP:</td>
<td>$200</td>
</tr>
<tr>
<td>Small Facility for Nonprofit Organizations pursuant to KRS 224.16-050(5):</td>
<td>$50</td>
</tr>
<tr>
<td>Large Facility: Sewer Lines</td>
<td>$800</td>
</tr>
<tr>
<td>Intermediate Facility: Sewer Lines</td>
<td>$400</td>
</tr>
<tr>
<td>Small Facility: Sewer Lines</td>
<td>$200</td>
</tr>
</tbody>
</table>

(5) Fees in this section shall not apply to agricultural wastes handling systems or renewals of KPDES permits.

(6) The WWTP fee shall apply to the WWTP project and any sewers or pump stations located on the plant property. A sewer fee shall apply to all sewers, force mains, and pump stations which are bound together as one (1) set of plans. If a WWTP project includes sewers, force mains, or pump stations located off of the plant property, at least two (2) fees shall be submitted.

(7) To qualify for the reduced fee in subsection (4) of this section, nonprofit organizations shall submit proof that they are qualified under Section 501(c)(3) of the Internal Revenue Code.

Section 6. Plans and Specifications. (1) The applicant shall submit to the cabinet at least three (3) sets of detailed plans and specifications for the facility. Plans for gravity sewer lines and force mains shall include a plan view and a profile view. The submittal shall be accompanied by a completed permit application on the forms required by Section 2 of this administrative regulation and the applicable items required by this administrative regulation.

(2) The cabinet may request additional information as is necessary to evaluate the facility to ensure compliance with this administrative regulation.

(3) If [When] cabinet approval is obtained, [no] changes shall not be made to the plans and specifications which would alter or affect the location, capacity, type of treatment process, discharge location or quality of effluent without issuance of a modified permit from the cabinet.

(4) If a proposed facility will become a part of a sewer system served by a regional facility or has a projected average daily design capacity of 10,000 gpd or more, the plans and specifications shall be prepared, stamped, signed, and dated by a professional engineer.

(5) The plans shall be accompanied by engineering calculations necessary for the understanding of the basis and design of the facility.

Section 7. Design Considerations. (1)(a) Facilities, except extended aeration package WWTPs with an average daily design capacity less than 100,000 gpd, shall be designed in accordance with the "Recommended Standards for Wastewater Facilities" of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, commonly referred to as "Ten States' Standards", 1990 edition, incorporated by reference in Section 29 of this administrative regulation. Deviations from the "Ten States' Standards" requirements may be approved if the applicant submits a written request for a deviation with the basis for the request. The basis for the deviation request shall be supported by current engineering practice. Some references to current engineering practice may be found in any "Manual of Practice" published by the Water Environment Federation and "Wastewater Engineering Treatment, Disposal, Reuse", Third Edition, by Metcalfe and Eddy, Inc.

(b) Other practices may be required by the cabinet based on

-2137-
the cabinet's best professional judgment that the practices are necessary for the protection of public health and the environment.

(c) Other practices may be approved by the cabinet if sufficient operational experience is available from previous similar installations to indicate no operational problems have occurred and that water quality standards have not been violated.

(2) Extended contact package WWTPs, with an average daily design capacity less than 100,000 gpd shall comply with Section 10 of this administrative regulation and any other applicable section.

(3) The applicant shall demonstrate to the cabinet that the effluent from a proposed facility will:

(a) Meet those minimum conditions applicable to all waters of the Commonwealth found in 401 KAR 5:031;
(b) Not cause those waters classified by 401 KAR 5:026 or 5:030 to be of lesser quality than the numeric criteria applicable to those waters in 401 KAR 5:031 or the requirements of 401 KAR 5:030;
(c) Be in accordance with any general or particular facility requirements of 401 KAR 5:031 KAR Chapter 5.

(4) Each WWTP shall have a flow measuring device at the plant capable of measuring the anticipated flow, including variations, with an accuracy of ± ten (10) percent. The flow measuring device shall measure all flow discharged by the WWTP including any bypasses. An indicating, recording, and totalizing flow measuring device shall be installed at each large WWTP. Flow measuring devices for new large WWTPs shall meet the requirements of Section 12 of this administrative regulation by the Modified Proctor Density test prior to the installation of the sewer lines.

(5) Bypass or overflow structures of any type shall not [No bypass or overflow structure of any type shall be] be constructed in any sewer line or pump station or at any WWTP unless specifically approved by the cabinet in writing.

Section 8. Requirements for Sewer Line Extensions. (1) If the applicant does not own all of the proposed sewer line extension, the applicant shall identify the owner and the portion of the sewer line extension owned by the owner.

(2) The applicant shall submit letters from:

(a) The owner of the sewer line extension stating that the owner will accept operation and maintenance responsibilities for the sewer line extension when it is constructed;

(b) The owner of the sewer system stating that the owner approves the connection and accepts responsibility for the additional flow; and

(c) The owner of the WWTP stating that the owner approves the connection and accepts responsibility for the additional flow.

(3) The applicant shall demonstrate that the portion of the sewer system used by the connection has adequate capacity to transport the current and anticipated peak flow to the WWTP and that the portion of the sewer system used by the connection is not subject to excessive infiltration or excessive inflow. The cabinet may deny a sewer line extension for that portion of the sewer system if when the portion of the system is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation which addresses these conditions has been approved and is being implemented.

(4) The applicant shall demonstrate that the WWTP which receives the waste has adequate capacity to treat the current and the anticipated flow and is not subject to excessive infiltration or excessive inflow. The cabinet may deny the sewer line extension if the WWTP does not have adequate capacity to treat the flow or is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation which addresses these conditions has been approved and the plan is being implemented.

(5) The entrance of groundwater into, or loss of waste from, a new gravity sewer line shall be limited to 200 gpd per inch of diameter per mile of the gravity sewer line. This limitation includes manholes, gravity sewer lines, and appurtenances.

(6)(a) The integrity of a new gravity sewer line shall be verified by either the infiltration-elimination or low pressure air testing method. An infiltration-extrapolation test shall be performed with a minimum positive head of two (2) feet. A deflection test shall be performed for each new flexible pipe; pipe deflection shall not exceed five (5) percent. Each new manhole shall be tested for water-tightness.

(b) The integrity of a new force main shall be verified by leakage tests. The applicant shall describe the proposed testing methods and leakage limits in the specifications submitted with the permit application.

(7) The construction of a new combined sewer shall not be permitted unless it is a combination sewer, flood relief sewer, or a replacement of a combined sewer that:

(a) Conforms with the long-term CSO control plan;
(b) Enhances water quality; and
(c) Protects public health and safety.

(8) Gravity sewer lines and force mains shall be designed and constructed to give mean velocities, when flowing full, of not less than two and zero-tenths (2.0) feet per second. The roughness coefficient used in the Manning or Kutter's formula shall be 0.013 or the "C" factor used in the Hazen-Williams Formula shall be 100. If the specifications allow only plastic pipe, a roughness coefficient of 0.011 or a "C" factor of 120 may be used. Roughness coefficients between 0.013 and 0.011 may be considered for other pipe materials if sufficient documentation of experimental testing is approved by the cabinet.

(9) Gravity sewer lines and force mains shall have a minimum of thirty (30) inches of cover or provide comparable protection.

(10) If gravity sewer lines and force mains are to be constructed in fills areas, the fill areas shall be compacted to ninety-five (95) percent density as determined by the Standard Proctor Density test or to a minimum of ninety (90) percent density as determined by the Modified Proctor Density test prior to the installation of the sewer lines.

(11) The minimum size for conventional gravity sewer lines shall be eight (8) inches, except that a six (6) inch sewer line may be approved if no future extension is possible. Alternative type sewer systems may be approved if sufficient operational experience is available from previous similar installations to indicate no operational problems have occurred.

(12) A manhole shall be provided at the junction of two (2) building sewers. This subsection shall not apply to building sewers which serve single-family residences.

(13) The following building sewers shall be [are] exempt from the requirements of this administrative regulation:

(a) Gravity sewers which:

1. Have a diameter of less than eight (8) inches and discharge directly to the sewer main;
2. Serve a single-family residence building or a multifamily residence building with four (4) dwelling units or less; or
3. Serve a single office building or a single mercantile building with an occupant load of less than thirty (30) persons.

(b) Force main sewers, regardless of the location of the pump station which:

1. Have a length of less than 500 feet and discharge directly to a gravity sewer main;
2. Serve a single-family residence building or multifamily residence building with four (4) dwelling units or less; or
3. Serve a single office building or a single mercantile building with an occupant load of less than thirty (30) persons. [The length of building sewers shall be less than or equal to 150 feet. This subsection shall not apply to building sewers which serve single-family residences.]

(14) Sewer lines shall be located at least fifty (50) feet away from a stream which appears as a blue line on a USGS 7.5 minute topographic map except where the sewer alignment crosses the stream. The distance shall be measured from the top of the stream bank. The cabinet may allow construction within the fifty (50) foot buffer if adequate methods are used to prevent the soil from entering the stream.

(15) Gravity sewer lines and force mains that cross streams shall be constructed by methods which maintain normal stream flow and allow for a dry excavation. Water pumped from the excavation shall be contained and allowed to settle prior to reentering the stream. Excavation equipment and vehicles shall operate outside of the flowing portion of the stream. Spoil material from the sewer line excavation shall not be allowed to enter the flowing portion of the stream.

(16) Pump station wetwells shall be sized such that, based on
the average flow, the time to fill the wetwell from the pump-off elevation to the pump-on elevation shall not exceed thirty (30) minutes.

(17) Pump station wetwells shall have a vent.

(18) Pump stations shall provide a minimum of two (2) hours of detention, based on the average design flow, above the high level alarm elevation or provide an alternate source of power with wetwell storage providing sufficient time for the alternative power source to be activated.

(19) Each high point in the force main shall have automatic air release valves.

(20) The applicant shall submit a performance curve for proposed pump stations.

(21) A simplex design shall be used only for pump stations which serve an individual residence or business and a spare pump shall be available for immediate installation.

Section 9. Municipal Water Pollution Prevention Program. This section applies to owners of regional WWTPs, sewer systems served by regional WWTPs, and KIMP.

(1) For each regional WWTP, the cabinet shall [will] review the WWTP's reported monthly flows and organic loads for the most recent twelve (12) months. If the average monthly average flow or organic load, or for systems with combined sewer lines the lowest monthly flow and associated organic load, exceed the following values, the cabinet shall advise the owner of the WWTP of the need to address the potential overload condition pursuant to subsection (2) of this section:
   (a) For a regional WWTP with a design capacity of ten (10) mgd or less, ninety (90) percent of the WWTP's average daily design capacity; or
   (b) For a regional WWTP with a design capacity of more than ten (10) mgd, ninety-five (95) percent of the WWTP's average daily design capacity.

(2) The cabinet may deny the approval of any sewer line extension until the owner of the WWTP commits to addressing the potential overload condition identified in subsection (1) of this section. The owner may address the condition by:
   (a) Demonstrating, with supporting documentation, that the average daily design capacity of the plant is greater than the permitted amount. The cabinet shall [will] review the request and if justified, shall [will] issue a revised average daily design capacity for the WWTP by issuing a modification to the KPDES permit;
   (b) Expanding the WWTP to a size sufficient to handle the anticipated flows and loads; or
   (c) Performing other remedial measures which address the condition.

(3) Sewer line extensions which are of sufficient flow or add sufficient load to exceed the remaining design capacity of the WWTP or exacerbate water quality problems may be denied.

(4) The owners of the following facilities shall conduct a study of the sewer system or the affected portion of the sewer system which complies with subsections (5) and (6) of this section:
   (a) Regional WWTPs with reported average flows or organic loads which exceed the percent identified in subsection (1)(a) or (b) of this section, as applicable, and KIMPs which either:
      1. Receive more than 275 gallons per capita per day of sewage flow based on the maximum flow received during a twenty-four (24) hour period exclusive of industrial flow; or
      2. Receive more than 120 gallons per capita per day of sewage flow based on the annual average of daily flows exclusive of industrial flow.
   (b) Regional WWTPs, sewer systems served by a regional WWTP, or facilities with KIMPs which are subject to excessive infiltration or excessive inflow.

(5) The study shall determine if the infiltration-inflow can be removed in a cost-effective manner by using a twenty (20) year present worth cost analysis and if not, shall identify the modifications to the sewer system, affected portion of the sewer system, or the WWTP that are necessary to transport and treat the infiltration-inflow. A schedule for completion of the necessary modifications shall also be prepared. The study and schedule shall be submitted to the cabinet for review and approval.

(6) For the infiltration-inflow study of the sewer system or the affected portion of the sewer system, the owner shall:
   (a) Use a map of the sewer system or the affected portion of the sewer system to select manholes for the installation of flow monitoring equipment;
   (b) Install equipment to monitor flow at the key manholes, groundwater levels, and rainfall volume and duration for a period of thirty (30) to ninety (90) days;
   (c) Conduct physical surveys, smoke tests, and dye water studies of the affected portion of the sewer system;
   (d) Evaluate the cost-effectiveness of transportation and treatment versus correction of the infiltration-inflow sources by using a twenty (20) year present worth cost analysis;
   (e) If justified, internally inspect the sewer lines in the affected portion of the sewer system to determine the rehabilitation locations and methods;
   (f) Develop plans for rehabilitation of the affected portion of the sewer system or modifications to the affected portion of the facility necessary to transport and treat all flows; and
   (g) Develop a schedule for completion of the rehabilitation or modifications.

(7) The owner of the facility shall complete the necessary rehabilitation or modifications in accordance with the approved schedule. The cabinet may deny further sewer line extensions if the owner is not meeting or is not making acceptable progress toward meeting the approved schedule.

Section 10. Extended Aeration Package WWTP Requirements. This section shall apply [applyies] to extended aeration package WWTPs intended to treat only domestic sewage but shall [does] not apply to extended aeration package WWTPs which serve an individual residence.

(1) A bar screen shall be provided for each plant, except those with trash traps.

(2) The aeration chamber shall have a minimum detention time of twenty-four (24) hours based on the average design flow.

(3) A minimum of 2,050 cubic feet of air shall be provided per pound of BOD.

(4) The clarifier shall have a minimum detention time of four (4) hours based on the average design flow, a surface overflow rate of less than 1,000 GPD/ft², and a solids loading of less than thirty-five (35) lb/m² based on the peak daily design flow rate.

(5) A positive sludge return shall be provided.

(6) A source of water shall be provided for cleanup. If a potable source is provided, backflow preventers shall be installed to protect the water supply.

(7) Fencing with a lockable gate shall be installed around the plant site.

(8) An all-weather access road to the plant shall be provided.

(9) A sludge holding system shall be provided for each large WWTP. The sludge holding system shall:
   (a) Provide two (2) cubic feet of volume per 100 gallons of WWTP design treatment capacity;
   (b) Provide thirty (30) cubic feet per minute (cfm) of air per 1,000 cubic feet of tank volume;
   (c) Be designed to prevent overflows; and
   (d) Transport supernatant to the aeration chamber.

(10) For large WWTPs, motors and blowers shall be installed sufficient to handle the load if the largest unit is taken out of service.

(11) If food grinders are used, treatment units shall be designed for treating the additional BOD loading; additional treatment processes may be required.

(12) Post aeration, if required by effluent limits, shall be designed to raise the effluent dissolved oxygen from two (2) mg/l to the required effluent concentration. If a diffused air system is used, a minimum blower capacity of 0.154 cubic feet per minute (cfm) per 1,000 gallons of average daily design capacity shall be provided. If a step aeration ladder is used, a minimum drop of nineteen (19) feet shall be provided.

(13) WWTPs with monthly average permit limits for CBOD of twenty (20) mg/l or less shall provide additional treatment units.

(14) WWTPs which serve restaurants or other similar establishments where food is prepared and served shall be designed to treat the additional BOD loading.
(15) Effluent discharge piping for new WWTPs, except regional facilities, shall be designed to transport sewage to facilitate a future connection to a regional facility.

(16) Used package extended aeration WWTPs may be used if the tank is structurally sound and all mechanical equipment has been reconditioned.

Section 11. Disinfection. (1) All WWTPs shall have a disinfection process which meets the following requirements:

(a) An ultraviolet disinfection system designed to treat the anticipated peak hourly flow;

(b) A chlorination system with a flow or demand proportional feed design. The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average flow, or fifteen (15) minutes based on the peak hourly flow, whichever requires the larger tank size. WWTPs shall also have a dechlorination system with a flow or demand proportional feed system if necessary to meet the effluent limits; or

(c) A chlorination system with a manually controlled feed system and a flow equalization basin designed to eliminate the diurnal flow variations. The flow equalization basin shall meet the requirements of Section 17 of this administrative regulation. The chlorine contact tank shall have a minimum detention time of thirty (30) minutes based on the average design flow or fifteen (15) minutes based on peak hourly flow. WWTPs shall also have a dechlorination system if necessary to meet the effluent limits.

(d) Other disinfection processes providing equivalent treatment may be approved by the cabinet.

(2) Tablet type chlorination equipment shall not be used in intermediate or large WWTPs.

Section 12. Requirements for Flow Measuring Devices. This section shall apply to new large WWTPs. Each flow measuring device shall be capable of measuring the anticipated flow, including variations, with an accuracy of ten (10) percent. The flow measuring device shall measure all flow received at the WWTP. An indicating, recording, and totalizing flow measuring device shall be installed at each WWTP.

(1) If the influent and effluent flow are expected to be significantly different, flow measuring devices shall be provided for both the influent and the effluent flow.

(b) Multiple flow measuring devices shall be provided for the following:

1. WWTPs that store and hydrographically control the release of effluent;

2. WWTPs with flow equalization facilities which are designed to store more than the volume required to dampen the diurnal flow variations;

3. WWTPs with lagoons that have a detention time of greater than twenty-four (24) hours;

4. WWTPs with the capability to bypass a treatment process; and

5. WWTPs with more than one (1) discharge point.

(2) Sharp crested weirs shall be used for measuring effluent flow only and shall have the following characteristics:

(a) The weir shall be installed perpendicular to the axis of flow and there shall be no leakage at the weir edges or bottom;

(b) The weir plate shall be level and adjustable;

(c) The sides of a rectangular contracted weir shall be vertical;

(d) The angles of V-notch weirs shall be cut precisely;

(e) The thickness of the weir crest shall be less than one-tenth (0.1) of an inch;

(f) The distance from the weir crest to the bottom of the approach channel shall be more than one (1) foot or two (2) times the maximum weir head, whichever is greater;

(g) For weirs other than suppressed, rectangular weirs, the distance from the sides of the weir to the sides of the approach channel shall be more than (1) foot or two (2) times the maximum weir head, whichever is greater [This does not apply to suppressed rectangular weirs];

(h) Air shall circulate freely under, and on both sides of, the nappe;

(i) The measurement of head on the weir shall be made at least four (4) times the maximum weir head upstream from the weir crest;

(j) The cross-sectional area of the approach channel shall be at least eight (8) times the area of the nappe. The approach channel shall be straight and uniform upstream from the weir for a distance of fifteen (15) times the maximum weir head;

(k) The minimum acceptable weir head shall be [is] two-tenths (0.2) foot;

(l) The maximum downstream pool level shall be at least two-tenths (0.2) foot below the crest elevation;

(m) The weir length for a rectangular, suppressed, or cipolletti weir shall be at least three (3) times the maximum weir head; and

(n) A reference staff gauge shall be provided.

(3) Parshall flumes may be used to measure influent or effluent flows and shall have the following characteristics:

(a) The approach channel upstream of the flume shall be straight and have a width uniform for the length required by the following:

1. If the flume throat width is less than one-half (1/2) the width of the approach channel, the straight upstream channel length shall be twenty (20) times the throat width;

2. If the flume throat width is equal to or larger than one-half (1/2) the width of the approach channel, the straight upstream length shall be greater than ten (10) times the approach channel width; and

3. If the cross-sectional area of the inlet to the approach channel is smaller than the cross-sectional area of the approach channel, additional straight upstream channel length may be required to dissipate the velocity;

(b) The throat section walls shall be vertical;

(c) The head measuring point shall be at two-thirds (2/3) the length of the converging sidewall;

(d) The flow shall be evenly distributed across the channel, shall be free of turbulence or waves, and shall not be located after transition sections;

(e) The longitudinal and lateral axes of the converging crest floor shall be level;

(f) Free flow conditions shall be maintained; and

(g) A reference staff gauge shall be provided for H0 and H0 to determine if submergence occurs.

(4) Other types of flow measuring devices may be approved by the cabinet if the device reasonably and accurately measures the flow.

Section 13. Reliability Categories. The cabinet shall determine the reliability categories of a WWTP based on factors such as the size of the discharge, the size of the receiving stream, and downstream water quality classifications.

(1) WWTP reliability categories are divided into three (3) grades:

(a) Grade One WWTPs shall have redundancy in units and alternate power sufficient for the continuous use of all treatment processes and disinfection;

(b) Grade Two WWTPs shall have redundancy in units and alternate power sufficient for the continuous use of the preliminary, primary, and secondary treatment processes and disinfection; and

(c) Grade Three WWTPs shall have redundancy in units and alternate power sufficient for the continuous use of the preliminary and primary treatment processes and disinfection.

(2) WWTPs which discharge to a waterbody designated in 401 KAR 5:030 as a waterbody whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall meet the requirements of a Grade One reliability category if the average daily design capacity is greater than twenty (20) percent of the seven (7) day, ten (10) year (TQD) low flow of the receiving stream.

(3) WWTPs which discharge into sinkholes or disappearing streams shall meet the requirements of a Grade One reliability category.

(4) WWTPs which discharge within five (5) miles of a public water supply intake or discharge directly into a wellhead protection area shall meet the requirements of a Grade One reliability category.

(5) WWTPs which discharge to a waterbody designated in 401 KAR 5:030 as a waterbody whose quality exceeds that necessary
to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall meet the requirements of a Grade Two reliability category if the average daily design capacity is equal to or less than twenty (20) percent of the 70% low flow.

(6) Large WWTPs which discharge within five (5) miles upstream of the head of an embayment when the lake is at normal pool elevation shall meet the requirements of a Grade Two reliability category.

(7) Large WWTPs shall, at a minimum, meet the requirements of a Grade Three reliability category.

(8) WWTPs which are subject to reliability requirements shall:
   (a) Provide sufficient units to allow for cleaning and repair without causing a violation of effluent limitations or a bypass from the sewer system or the WWTP. This shall (will) require storage or treatment capability sufficient to contain or treat the volume of the largest tank and the flow received during the time needed to drain, complete cleaning, and accomplish any anticipated repair without causing a permit violation or bypass of any treatment process; and
   (b) Provide alternate power from the connection of at least two (2) independent power sources such as substations, an emergency generator, or comparable protection.

Section 14. Requirements for Trash Traps. Trash traps shall not be used on WWTPs with a design capacity of larger than 100,000 gpd. Trash traps shall have an outlet baffle, be accessible to cleaning equipment, have air-tight access openings for cleaning, allow for cleaning in front of baffles, and have a volume required by this section.

(1) For small WWTPs, the trash trap volume shall be fifteen (15) percent of the average daily design flow; and
(2) For intermediate or large WWTPs with a design capacity of 100,000 gpd or less, the trash trap volume shall be as indicated in the following table for the appropriate WWTP capacity. For capacities not included, the volume will be interpolated.

<table>
<thead>
<tr>
<th>WWTP Capacity (GPD)</th>
<th>Trash Trap Volume (Gallons)</th>
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</thead>
<tbody>
<tr>
<td>10000</td>
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<tr>
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<tr>
<td>90000</td>
<td>3920</td>
</tr>
<tr>
<td>100000</td>
<td>4000</td>
</tr>
</tbody>
</table>

Section 15. Requirements for Slow Sand Filters. (1) Wastewater loading shall not exceed five (5) GPD per square foot of filter surface area.

(2) Filter areas larger than 300 square feet shall have multiple beds.

(3) The discharge piping on the filter bed shall be located so that the maximum lateral travel over the sand is less than twenty (20) feet.

(4) Each discharge point shall serve a maximum of 300 square feet of filter surface.

(5) Each discharge point shall have a splash block with a minimum surface area of nine (9) square feet and a square or circular shape.

(6) Distribution piping shall be designed to drain properly.

(7) Underdrains shall be spaced on ten (10) foot centers or less.

(8) Gravel shall be placed around the underdrains and to a depth of six (6) inches over the top of the underdrains.

(9) The filter bed shall have at least thirty (30) inches of sand with an effective size between three-tenths (0.3) and five-tenths (0.5) millimeter.

(10) The dosing chamber shall have a volume sufficient to provide a depth of two (2) inches over the entire filter bed.

Section 16. Requirements for Rapid Sand or Mixed Media Filters. Rapid sand or mixed media filter loadings shall not exceed one (1) gallon per minute per square foot of filter surface area. If flow equalization is provided, the allowable loading may be increased to two (2) gallons per minute per square foot. A backwash system shall be provided.

Section 17. Requirements for Flow Equalization Basins. (1) Flow equalization basins shall have:
   (a) A variable flow weir box set to deliver flow at a treatable rate;
   (b) A minimum of 1.25 cfm of diffused air per 1,000 gallons of flow equalization volume;
   (c) An emergency overflow to an appropriate point in the treatment scheme; and
   (d) Sufficient volume to dampen the diurnal flow variations.

(2) If no site specific information nor similar flow pattern is available, the flow equalization basin volume shall be based on the following formula:

\[ V = \left(1 - \frac{1}{24}\right) \times Q \]

Where:
\[ V \] is the required volume for the flow equalization basin;
\[ Q \] is the number of hours flow is generated; and
\[ Q \] is the volume of flow anticipated to be received at the WWTP during a twenty-four (24) hour period.

(3) Flow equalization basins with earth embankments shall be constructed with a slope no steeper than 1:3 (one to three) unless a steeper slope is supported by geotechnical and slope stability studies.

(4) For flow equalization basins constructed in material other than earth, the applicant shall indicate how the basin will be properly sealed.

Section 18. Requirements for Wastewater Treatment Lagoons. (1) BOD loading shall be less than thirty-five (35) pounds per day per acre of lagoon surface for nonaerated primary lagoon systems, fifty (50) pounds per day per acre of lagoon surface for nonaerated polishing lagoons, and 150 pounds per day per acre of lagoon surface for aerated lagoons.

(2) The lagoon design submittal shall provide details on the aeration system proposed including the type, location, and capacity of the aeration units; the operating depth; the area of the lagoon at the operating depth; permeability and thickness of the lagoon liner; anticipated ultimate wastewater flow; and influent wastewater characteristics. New lagoon systems shall be designed to treat a raw wastewater BOD of at least 240 mg/l. The lagoon design shall be evaluated by the method discussed in "Ten States' Standards", incorporated by reference in Section 29 of this administrative regulation, and the predicted BOD remaining shall be less than the required effluent concentration.

(3) Lagoons shall be at least 200 feet from any present or future residence.

(4) Nonaerated primary lagoons shall have a minimum detention time of ninety (90) days.

(5) The "Ten States' Standards" requirement for vegetation to be established prior to filling the lagoon shall not apply.

(6) The cabinet may approve a lagoon with an embankment slope steeper than 1:3 (one to three) if supported by geotechnical and slope stability studies.

(7) The applicant shall indicate how basins constructed in material other than earth will be properly sealed.

Section 19. Additional Requirements for WWTPs Which Serve Schools. In addition to the requirements of Sections 10 to 18 of this administrative regulation, the following requirements shall apply to WWTPs which serve schools:

(1) If a flow equalization basin is provided it shall meet the requirements of Section 17 of this administrative regulation.

(2) The aeration tank shall have at least ten (10) gallons of capacity per day per student for elementary and middle schools, or at least twenty (20) gallons of capacity per day per student for high schools.

(3) The secondary clarifier shall be sized to provide a maximum surface loading, at the average design flow, of 300 GPD per
square foot of clarifier surface area. If no flow equalization basin is provided, the secondary clarifier shall be sized to provide a maximum surface loading of 100 GPD per square foot at average daily design flow.

Section 20. Additional Requirements for WWTPs Which Serve Multifamily Residential Developments. In addition to the requirements of Sections 10 to 18 of this administrative regulation, the following requirements apply to WWTPs which serve multifamily residential developments. Multifamily residential developments including subdivisions, condominiums, apartments, and mobile home parks shall provide one (1) or more of the following measures for additional reliability:

1. Blowers and motors shall be installed sufficient to handle the load if the largest unit is not available for service;
2. An alternate source of power; or
3. Additional treatment units or processes.

Section 21. Additional Requirements for WWTPs Which Propose Effluent Disposal by Spray Irrigation. In addition to the requirements of Sections 10 to 18 of this administrative regulation, the following requirements apply to WWTPs which propose effluent disposal by spray irrigation.

1. One (1) acre of spray field shall be provided for each 1,000 GPD of treated wastewater. Higher application rates may be approved if justified by a detailed design based on site specific information.
2. The spray field shall have less than a six (6) percent slope, have moderate to high soil permeability, and have sufficient vegetative growth to promote absorption, evaporation, and transpiration.
3. A WWTP capable of meeting secondary treatment which meets the requirements of 401 KAR 5:045 and disinfection shall be provided prior to irrigation.
4. A twenty (20) foot buffer zone shall be provided between the outer boundary of the spray field and the property boundary or the applicant shall provide screening to inhibit the transport of aerosols and windborne spray across property boundaries.
5. A spray irrigation field for an individual residence shall have:
   a. At least three (3) sprinkler heads;
   b. A spray area larger than 0.19 acre; and
   c. A barrier around the spray field.
   d. The spray irrigation field shall be located at least 200 feet from the nearest dwelling.
   e. Effluent from the spray irrigation field shall be contained on the owner's property.

Section 22. Requirements for WWTPs which Serve an Individual Residence. (1) Wastewater plants intended to serve an individual residence and eligible for a general KPDDES permit under 401 KAR 5:055 shall have the following treatment processes: extended aeration WWTP, filtration, and disinfection. The WWTP shall be capable of meeting secondary treatment requirements of 401 KAR 5:045 without additional treatment units.

2. A minimum lot size of one (1) acre shall be provided for WWTPs located within a residential subdivision.

3. WWTP serving an individual residence and proposing effluent disposal by spray irrigation shall also comply with Section 21 of this administrative regulation.

Section 23. Additional Requirements for WWTPs which Serve Car Washes or Laundries. In addition to the requirements of Sections 10 to 18 of this administrative regulation, WWTPs which serve commercial or fleet car washes, commercial laundries, or laundries serving commercial or institutional establishments, shall have an average daily flow which is at least five (5) times greater than the anticipated flow of the car wash, commercial laundry, or laundry serving a commercial or institutional establishment.

Section 24. The Construction Permit. (1) A permit to construct a facility shall be effective upon issuance unless otherwise conditioned. Construction shall be completed within twelve (12) months unless additional time is requested. If construction is not commenced within the twelve (12) months following a permit's issuance, a new permit shall be obtained before construction may begin. The cabinet may allow a single twelve (12) month extension to begin construction if site conditions have not changed.

(2) The permittee shall submit the certification from the engineer that the facility was constructed in conformity with the plans and specifications approved by the cabinet in accordance with this administrative regulation within thirty (30) days from the completion of construction. The permittee may submit the certification for projects not designed by an engineer. Failure to comply with this subsection may result in the denial of sewer line extensions to the incomplete facility.

(3) The permit is issued to the applicant and the permittee shall remain the responsible party for compliance with all applicable statutes and administrative regulations until a notarized applicable change in ownership certification, incorporated by reference in Section 29 of this administrative regulation, is submitted and the transfer of ownership is acknowledged by the cabinet.

(4) Permit conditions.

a. Permits may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and administrative regulations promulgated pursuant thereto. The conditions shall be in writing and treated as a part of the permit.

b. The following conditions shall apply to all construction permits:
   1. There shall be no deviations from the plans and specifications submitted with the application or to the cabinet specified in this subsection, unless authorized in writing by the cabinet.
   2. The permittee shall ensure that the effluent is of satisfactory quality to prevent violations of the standards in 401 KAR Chapter 5.
   3. When the construction of the system is completed, the owner shall submit a written certification to the cabinet that the facility has been constructed and tested in accordance with the approved plans and approval conditions. Failure to certify may result in penalty assessments or future approvals being withheld.
   c. The following conditions shall also apply to construction permits issued to WWTPs which discharge to waters of the Commonwealth:
      1. If violations of the standards of 401 KAR Chapter 5 result from the discharge of the treated effluent, the owner shall provide additional treatment or an extension of the effluent line;
      2. If a sewer system served by a regional facility becomes available, the WWTP shall be abandoned and the influent flow shall be diverted to the regional facility;
      3. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this cabinet and other state, federal, and local agencies.
   d. The construction permit for agricultural wastewater handling systems may be used as an interim operational permit until the operational permit is issued or denied.
   e. The issuance of a permit by the cabinet shall [does] not convey any property rights of any kind or any exclusive privilege.

Section 25. Kentucky No Discharge Operational Permits (KNDOPs). (1) Applicability. These permits are issued to facilities which do not discharge to waters of the Commonwealth, including agricultural wastes handling systems and facilities which dispose of their effluent by spray irrigation. If the permit is issued to the applicant, [the permit is issued to the applicant and] the permittee shall remain the responsible party for compliance with all applicable statutes and administrative regulations until a notarized applicable change in ownership certification, incorporated by reference in Section 29 of this administrative regulation, is submitted and the transfer of ownership is acknowledged by the cabinet.

(2) Permit conditions. Permits may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and administrative regulations promulgated pursuant thereto. The conditions shall be in writing and shall be treated as part of the permit. The following conditions shall apply to all KNDOPs.

a. There shall be no point source discharge of wastewater from the facility.

b. The permit authorizes operation only of the WWTP de-
scribed in the permit in the manner and under the conditions described in the permit application and supporting documents as approved by the cabinet in the permit.

(c) The permit shall not be construed as authorizing any operation which is otherwise in contravention of any statute, administrative regulation, ordinance, or order of any governmental unit. The permit shall not be construed to authorize the creation or maintenance of a nuisance.

(d) The permit shall be subject to revocation or modification by the cabinet as set forth in KRS Chapter 224. Commencement of a routine point source discharge shall result in a permit revocation.

(e) Any permit shall be issued under the provisions of KRS Chapter 224 and administrative regulations promulgated pursuant thereto. Issuance of the permit shall [does] not relieve the permitee from the responsibility of obtaining any other permits or licenses required by the cabinet and other state, federal, and local agencies.

(f) If applicable, the waste materials removed from the settling basin shall be disposed of according to the requirements of the Division of Waste Management in 401 KAR Chapters 30 through 49.

(g) Land application which results in runoff to a stream is prohibited.

Section 26. Kentucky Intermunicipal Operational Permits (KI-MOPE). These permits are issued to publicly owned sewer systems which discharge to a WWTP or a sewer system which is owned by another person. These permits shall [do] not apply to sewer systems with less than 5,000 linear feet of sewer line. The permit is issued to the applicant and the permitee shall remain the responsible party for compliance with all applicable statutes and administrative regulations until a notarized applicable change in ownership certification, incorporated by reference in Section 29 of this administrative regulation, is submitted and the transfer of ownership is acknowledged by the cabinet. Permits may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and administrative regulations promulgated pursuant thereto. The conditions shall be in writing and shall be treated as a part of the permit.

Section 27. Operational Permits. Operational permits required in Sections 25 and 26 of this administrative regulation shall be valid for five (5) years from the date of issuance, and shall be renewed to maintain continuous operation.

(1) The cabinet's permit may specify the type of monitoring or analysis required for a facility and the frequency that the monitoring or analysis shall be performed and reported to the cabinet.

(2) The facility, including backup or auxiliary components, shall be operated and maintained to ensure compliance with permit requirements and this administrative regulation.

(3) The issuance of a permit by the cabinet shall [does] not convey any property rights of any kind or any exclusive privilege.

Section 28. Alternative Requirements. The cabinet may approve alternative requirements to the provisions of Sections 7 to 23 of this administrative regulation based on the cabinet's best professional judgment that the alternative measure provides sufficient treatment. The applicant shall demonstrate that any alternatives requested by the applicant provide sufficient treatment.

Section 29. Documents Incorporated by Reference. (1) The following material is [documents or forms are hereby] incorporated by reference:

(a) [The material is available for inspection and copying, subject to the copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601 Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except state holidays.]

(b) [Recommended Standards for Wastewater Facilities, "1990 Edition" Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers. This document is also known as the "Ten States Standards," and may be obtained from Health Education Services, P.O. Box 7126, Albany, New York 12224; phone (518) 439-7286.

The following document and forms may be obtained from the Division of Water, KPDES Branch unless otherwise noted 14 Reilly Road, Frankfort, Kentucky 40601.

(a) "Water Policy Memorandum No. 84-02, Five Mile Limit Policy, signed by T. Michael Taimi, August 28, 1984", Facilities Construction Branch.

(b) "Construction Permit Application for Wastewater Treatment Plant, DEP 7071-W (9/96), Facilities Construction Branch.

(c) "Change in Ownership Certification for Sewer Line Extension, DEP 7071-S (9/96), Facilities Construction Branch.

(d) "Change in Ownership Certification for Sewer Line Extension, DEP 7071-CO (9/96), Facilities Construction Branch.

(e) "No Discharge Certification, DEP 7032-NDC (9/96).

(f) "Kentucky No Discharge Operational Permit Application, DEP 7032-N (9/96).

(g) "Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling System, Short Form B, DEP 7032-B-N (9/96).

(h) "Site Survey Request, Kentucky No Discharge Operational Permit for Agricultural Wastes Handling System, DEP 7032-Ag-Site (9/96)"

(i) "Kentucky Intermunicipal Operational Permit Application, DEP 7103 (9/96).

(j) "This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

TRANSPORTATION CABINET
Department Of Vehicle Regulation
Division Of Motor Carriers
(As Amended by the Senate and House Transportation Committees, March 3, 2004)

601 KAR 1:005. Safety administrative regulation.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 authorizes the Transportation Cabinet to promulgate administrative regulations relating to safety requirements. This administrative regulation establishes requirements for motor carriers operating in Kentucky.

Section 1. Definitions. (1) "City bus" is defined in KRS 281.013(1).

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier, is using a vehicle:

(a) To transport agricultural products from his farm;

(b) To transport farm machinery or farm supplies to his farm;

(c) Generally deemed to be farm machinery; and

(d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.

(4) "Load limit" means the seating capacity established by the manufacturer for a passenger-carrying vehicle plus an additional twenty-five (25) percent.

(5) "Suburban bus" is defined in KRS 281.013(2).
(6) "Utility" means an entity which provides water, electricity, natural gas, sewage disposal, telephone service, television cable, or community antenna service.

Section 2. Governing Federal Regulations. A commercial motor vehicle and its operator meeting the requirements set forth in 49 C.F.R. 390.5 operating for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this administrative regulation, shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation, and [are] hereby adopted without change:

(1) 49 C.F.R. Part 40, as effective October 1, 2003 [2004], Procedures for Transportation Workplace Drug and Alcohol Testing Programs;
(2) 49 C.F.R. Part 382, as effective October 1, 2003 [2004], Controlled Substances and Alcohol Use and Testing;
(3) 49 C.F.R. Part 383, as effective October 1, 2003 [2004], Commercial Driver's License Standards; Requirements and Penalties;
(4) 49 C.F.R. Part 385, as effective October 1, 2003 [2004], Safety Fitness Procedures;
(5) 49 C.F.R. Part 390, as effective October 1, 2003 [2004], General;
(6) 49 C.F.R. Part 391, as effective October 1, 2003 [2004], Qualifications of Drivers;
(7) 49 C.F.R. Part 392, as effective October 1, 2003 [2004], Driver of Commercial Motor Vehicles;
(8) 49 C.F.R. Part 393, as effective October 1, 2003 [2004], Parts and Accessory Necessary for Safe Operation;
(9) 49 C.F.R. Part 395, as effective October 1, 2003 [2004], Hours of Service of Drivers;
(10) 49 C.F.R. Part 396, as effective October 1, 2003 [2004], Inspection, Repair and Maintenance; and

Section 3. Exemptions and Exceptions. The following exemptions and exceptions to compliance with the provisions of Section 2 of this administrative regulation are adopted:

(1) A city or suburban bus shall not be required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation.
(2) The operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall:
    a. Comply with the provisions of 49 C.F.R. Parts 382 and 383; and
    b. Provide proof of having passed the medical examination set forth in 49 C.F.R. Part 391; or
    c. Have received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section for intrastate operators or as set forth in 49 C.F.R. Part 381 for interstate operators.
(3) A motor vehicle operated by the federal government, a state government, a county government, a city government, or a board of education shall not be required to comply with the federal regulations adopted in this administrative regulation.
(4) An operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of;
    a. Having passed the medical examination set forth in 49 C.F.R. Part 391; or
    b. Having received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section for intrastate operators or as set forth in 49 C.F.R. Part 381 for interstate operators.
(5) The operator of a vehicle specified in paragraph (a) of this subsection shall meet the requirements of 49 C.F.R. Part 382 relating to drug and alcohol testing.
(6) A motor vehicle which is used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier shall not be required to comply with 49 C.F.R. 393.9 to 393.33 [Title 49, Code of Federal Regulations, Part 393, Subpart B], relating to lighting device requirements.
(7) Medical waivers for intrastate drivers:
    a. A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 C.F.R. Part 391 under the provisions of 601 KAR 11:040.
    b. If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.
(8) A motor vehicle which operates exclusively in intrastate commerce shall:
    a. For an intrastate motor carrier identification number on Form TC 95-1, "Kentucky Trucking Application", April 2000 edition or Form TC 92-150, "Application for Intrastate Carrier Identification Number", March 1996 edition;
    b. Display the assigned intrastate motor carrier identification number and the name of the motor carrier in the same manner as required pursuant to 49 C.F.R. Part 390.21 except the identification number shall be preceded by the letters "USDOT" and followed by the letters "KY".
(9) Notwithstanding 49 C.F.R. Part 391.68(c), a Kentucky licensed commercial driver operating a passenger transportation vehicle on behalf of a private motor carrier of passengers shall not be exempt from the sections of 49 C.F.R. [Parts] 391.41 and 391.45 requiring a driver to be medically examined and to have a medical examiner's certificate on his person.

Section 4. Buses. (1) A bus shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.
(2) A seat shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.
(3) An employee in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and
schedules maintained, so that the passengers will not be subjected to unnecessary delays.

(4) An operator shall take into consideration the health and welfare of his passengers and control his operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in a position to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. A bus operated by an authorized carrier, except city or suburban buses, shall not be used to transport passengers in excess of its load limit. A passenger shall not be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear doorwell.

Section 6. Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial motor vehicle driver or commercial motor vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-Service Criteria" issued by the Commercial Vehicle Safety Alliance.

(2)(a) If a commercial motor vehicle is being operated with improper or invalid registration, without registration or in violation of any safety regulation or requirement, an officer or inspector of the Division of Motor Vehicle Enforcement shall be authorized to afford to the vehicle a notice indicating the nature of the violation and requiring its correction before the commercial motor vehicle is further operated.

(b) Refusal of the vehicle operator to grant permission for a law enforcement officer or inspector to conduct a safety inspection of the vehicle shall be cause for the officer or inspector to place the vehicle out-of-service until the permission is granted.

(c) Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of this administrative regulation [regulations].

(3)(a) If a commercial motor vehicle driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle.

(b) The commercial motor vehicle driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified.

(c) Refusal of the commercial motor vehicle driver to grant permission for a law enforcement officer or inspector to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted.

(d) Operating a commercial motor vehicle in violation of an out-of-service order shall constitute a separate violation of this administrative regulation.

Section 7. Persons Allowed to Perform Physical Examinations. A physical examination required pursuant to state or federal law shall be conducted by a medical examiner as defined in 49 C.F.R. 390.5. The following shall qualify:

(1) Physician licensed by the Kentucky Board of Medical Licensure;

(2) Osteopath licensed by the Kentucky Board of Medical Licensure;

(3) Physician assistant certified by the Kentucky Board of Medical Licensure when working under the direct supervision of a licensed physician;

(4) Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing; and

(5) Chiropractor licensed by the Kentucky State Board of Chiropractic Examiners [Licensure].

Section 8. Interpretations of the Federal Motor Carrier Regulations. The document published by the Federal Highway Administration in the Federal Register at 62 Fed. Reg. 16370, on April 4, 1997 presents official interpretive guidance material for the Federal Motor Carrier Safety Regulations which govern this administrative regulation. The document shall be used to interpret the provisions of this administrative regulation.

Section 9. Intrastate Safety Rating System. (1) The Transportation Cabinet may issue a safety rating to a motor carrier subject to the provision of this administrative regulation if all of the commercial motor vehicles operated by the motor carrier are operated exclusively in intrastate commerce.

(2) The safety standards and rating criteria set forth in 49 C.F.R. Part 385 shall be used by the Transportation Cabinet in issuing a safety rating.

Section 9. [40] Random Alcohol Testing Rate. Commercial Motor Vehicle employers shall randomly test a percentage of the average number of driver positions employed by them. The applicable percentage shall be determined by the Federal Motor Carrier Safety Administration's Administrator annually as set forth in 49 C.F.R. 382.305 (392-305).

Section 10. Incorporation [14]. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "North American Uniform Out-Of-Service Criteria" revised January 1, 2004 [April 1, 2004] by the Commercial Vehicle Safety Alliance;

(b) [62 Fed. Reg. 16370, April 4, 1997];

(c) TC 95-1, revised April, 2000; and

(c) [46] TC 92-150, revised March, 1996.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at any of the weigh stations operated by the Transportation Cabinet, and at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

MACK BUSHART, Commissioner
JAMES C. CODELL, III, Secretary
APPROVED BY AGENCY: December 12, 2003
FILED WITH LRC: December 5, 2003 at noon
CONTACT PERSON: Dana Fugazi, Staff Attorney III, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended at ARRS, March 9, 2004)

601 KAR 1:018. Special overweight or overdimensional permits.

RELATES TO: KRS 189.221, 189.222, 189.270, 189.2717, 23 C.F.R. 658.17, 49 C.F.R. 393.11
STATUTORY AUTHORITY: KRS 189.270(6), 189.271(9)(b), 189.2715(1), 189.2717(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.270(1) to (5), 189.271(9)(b), 189.2715(1), and 189.2717(1) authorize the Secretary of the Kentucky Transportation Cabinet to issue permits for the movement of motor vehicles with divisible or nondivisible loads exceeding legal weights or dimensions. This administrative regulation establishes the procedures and requirements for the issuance of an overweight or overdimensional permit. It exempts certain farm implement movements from the requirements of obtaining an overdimensional permit, but retains the associated safety requirements.

Section 1. Definitions. (1) "Boat" means a vehicle used for movement on the water and the trailer on which it is placed for transporting the vehicle on the highway.

(2) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset, excluding those times when heavy rain, snow, sleet, fog, or other atmospheric conditions render visibility lower than is ordinarily the
case during that period of the day.

(3) "Divisible load" means a load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional.

(4) "Dual-wheel axle" means one (1) axle with two (2) wheels on each side of the axle.

(5) "Farm implement or equipment" means machinery, equipment or vehicle used exclusively in a farm or agricultural operation including those items which are not required by KRS Chapter 186 to be registered.

(6) "Fully-controlled access highway" means a highway which:

(a) Gives preference to through traffic;

(b) Has access only at selected public roads or streets; and

(c) Has no highway grade crossing or intersection.

(7) "National holiday" means:

(a) New Year's Day;

(b) Memorial Day (as observed on the last Monday in May);

(c) Independence Day;

(d) Labor Day;

(e) Thanksgiving Day; and

(f) Christmas Day.

(8) "Nondivisible load" means a load or vehicle, which if separated into smaller loads would:

(a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or

(c) Require more than eight (8) work hours to dismantle using appropriate equipment.

(9) "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

(10) "Overweight" means the motor vehicle exceeds:

(a) The gross weight limit established in 603 KAR 5:066;

(b) The axle weight limit established in 603 KAR 5:066;

(c) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;

(d) The bridge weight limit established by 603 KAR 5:066; or

(e) The gross weight limit posted at a bridge or other structure.

(11) "Permit fee" means the fee set forth in KRS 189.270, 189.2715, or 189.2717 for the issuance of an overweight or overdimensional trip or annual permit, to cover the cost of processing the permit application, including:

(a) A qualification check of the applicant;

(b) A statutory compliance check; and

(c) An initial bridge and weight analysis.

(12) "Pole trailer" means a vehicle which is:

(a) Designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a hook or pole or being hauled or secured to the towing motor vehicle; and

(b) Used for transporting long or irregularly shaped loads such as poles, pipes, or structural members which generally are capable of sustaining themselves as beams between the supporting connections.

(13) "Single-wheel axle" means a steering axle with one (1) wheel on each side of the axle.

(14) "Toll road" means any project constructed under the provisions of KRS Chapter 175 or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet.

(15) "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes, or transformers, regulators, or other utility electrical field equipment. It shall not include any equipment necessary for the construction or operation of a power generation station.

Section 2. Permit Application. (1) An applicant for an overweight or overdimensional annual or trip permit shall submit to the Division of Motor Carriers a completed "Application for Annual Overweight/Overdimensional Permit, TC 95-25". The permit application shall contain the following:

(a) A description of the equipment or load to be moved;

(b) A description and vehicle identification number of the power unit moving the equipment;

(c) Registration weight and license plate number of the power unit;

(d) Equipment operator's name, telephone number and address;

(e) Routes requested for travel; and

(f) The period of time.

1. A single trip shall be ten (10) days or less; or

2. An annual permit shall be 365 days from date of issue.

(2) A single trip permit application or request shall specify the following:

(a) The year and make of the towing vehicle;

(b) The towing vehicle's license plate number;

(c) The maximum weight for which the vehicle is registered;

(d) The state of registration of the vehicle;

(e) Name and address of the owner;

(f) The dates of travel;

(g) The serial number of the manufactured home; and

(h) The specific routes of travel requested.

(3) If the towing vehicle for which a single trip permit is being requested is registered in a state other than Kentucky, the vehicle shall be either:

(a) Apportioned registered to operate in Kentucky; or

(b) In compliance with KRS 281.752.

(4) An annual permit application or request shall specify the following information relating to the motor vehicle:

(a) Year and make;

(b) Vehicle identification number;

(c) License plate number;

(d) The maximum weight for which it is registered;

(e) The state of apportioned registration, if not registered in Kentucky;

(f) Name and address of the motor carrier operating the vehicle;

(g) Whether the motor carrier operating the vehicle is a for-hire or private carrier.

(5) If the towing vehicle issued an annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky.

(6) The application for an annual permit shall contain a certification by the applicant that he is aware of the safety requirements in the movement of overweight/overdimensional loads and shall at all times comply with them.

(7) Special annual or trip permits to allow the movement of motor vehicles with gross weights or gross dimensions in excess of the weights and dimensions specified by statute and administrative regulation shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers when, in the discretion of the Department, it is necessary to provide transportation for specified cargo in the interest of the health, welfare and economy of the people.

(8) Each trip or annual permit issued shall be limited to designated portions of the state primary road system and stated periods of time.

(9) A separate permit shall be required for each vehicle involved in a movement.

(10) A permit shall not be issued for a divisible load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional except as provided by KRS 189.2715 or 189.2717.

(11) An overweight permit shall not be issued to the following:

(a) A Kentucky licensed vehicle, for a gross weight exceeding that for which the truck is registered, unless registered for 80,000 pounds (36,287.36 kilograms);

(b) A tractor-trailer combination of less than five (5) axles;

(c) A vehicle not registered in Kentucky, unless it has met one (1) of the following conditions:

1. Has been apportioned registered by another jurisdiction to operate in Kentucky at 80,000 pounds (36,287.36 kilograms); or

2. Has met the provisions of KRS 281.752;

(d) A vehicle whose axle weight would exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches established from the manufacturer's stamped tire measurement for
all tires on the axle; or
(e) A towing vehicle whose horsepower or braking capacity is
not adequate to safely transport the overdimensional or overweight
load.

(13) This administrative regulation shall not prohibit the permit
issuing office from further restricting movements or denying a per-
mit for any movement which may cause demage to property or
which may be detrimental to public safety and convenience.

(14) An annual permit shall not be issued if the vehicle is li-
censed with a limited or restricted registration as identified in KRS
186.050(8) and (9) for Kentucky-based vehicles.

Section 3. Height. (1) A vehicle and load with a height in ex-
cess of thirteen (13) feet, six (6) inches shall obtain a single-trip
overdimensional permit, pursuant to KRS 189.270(2), prior to
movement.
(2) The maximum height for each single-trip overdimensional
permit shall be determined by the cabinet, based upon underpass
and bridge height along the designated route.

Section 4. Weight. (1) Gross or axle overweight shall not be
permitted:
(a) On combination units of less than five (5) axles; or
(b) On a single unit except off-road equipment such as scraper,
mobile cranes or other self-propelled units.
(2) Kentucky licensed vehicles shall not be permitted for
weights exceeding that for which licensed unless licensed for the
maximum of 80,000 pounds.
(3) The weight on any single axle in any combination shall not
exceed the product of 700 pounds times the aggregate width in
inches established by the manufacturer's stamped tire measure-
ment of all the tires on the axle, or the following axle or axle group
weights, whichever is less:
(a) Single axle - 24,000 pounds;
(b) Tandem axle group if the combination vehicle has only five
(5) axles total - 45,000 pounds (minimum of forty-two (42) inches
spacing between the center of each of the axles of the tandem axle
group);
(c) Tandem axle group if the combination vehicle has six (6) or
more axles total - 48,000 pounds (minimum of forty-two (42) inches
spacing between the center of each of the axles of the tandem axle
group);
(d) Tridem axle group - 60,000 pounds (minimum of forty-two
(42) inches spacing between the center of each of the axles of the
tridem axle group);
(e) Five (5) axle combination units shall not exceed 96,000
pounds gross weight;
(f) Six (6) axle combination units shall not exceed 120,000
pounds gross weight;
(g) Seven (7) axle combination units shall not exceed 160,000
pounds gross weight.
(4) Since bridge capacity is the weight-controlling factor in
most instances, these maximum weights shall not be permitted
unless all bridges involved have sufficient capacity to accommo-
date the load.

Section 5. Responsibility of Permit Holder. (1) Any damage to
the highway, signs, guardrail or other public or private property
caused by the transportation of the specialized equipment shall be
the responsibility of the permit holder. The permit holder shall ei-
ther repair all damage incurred or pay for the repair.
(2) A permit holder shall not cut, trim, remove or relocate any
tree, shrub, guardrail, highway sign or other object on the highway
right-of-way without the written approval of the chief district engi-
neer having jurisdiction over the property involved.
(3) The applicant shall be responsible for providing accurate
information and reviewing the permit prior to travel on Kentucky
highways.

Section 6. Permit Availability. (1) The original of the annual
permit shall be carried in the overweight or overdimensional vehi-
cle at all times.
(2) The original or facsimile copy of a single trip permit shall be
carried in the overweight or overdimensional vehicle or equipment
at all times.
(3) The annual or the single trip permit shall be presented,
upon request, to any law enforcement officer or authorized person-
nel of the Department of Vehicle Regulation.
(4) An unauthenticated photocopy of the annual permit shall
not be valid.

Section 7. Duplicate Permits. A duplicate permit which is
needed to replace a lost, stolen or destroyed annual permit or to
transfer the permit to another towing vehicle may be obtained from
the Division of Motor Carriers by a payment of ten (10) dollars.
Only (1) transfer to another towing vehicle shall be allowed for
each annual permit during its effective year. Any additional transfer
of the annual permit requested shall be subject to the fees set forth
in KRS [Chapter] 186.270. The return of the original permit shall
be returned [is required] prior to the transfer of an annual permit.

Section 8. Travel Restrictions. (1) A single trip permit shall be
valid for period not to exceed ten (10) days. A time extension
shall only be granted if the permit holder proves extenuating cir-
cumstances. An annual permit shall be valid for 365 days from
date of issuance.
(2) The department may further prohibit movements in con-
gested areas within the peak traffic hours. The additional restric-
tions shall be noted on the permit when issued.
(3) Overdimensional restrictions shall not prohibit a utility com-
pany from working in an emergency situation to restore utility
service to an area otherwise experiencing an outage.

Section 9. Farm Implements. (1) Unless the movement occurs
on an interstate highway, toll road, or fully-controlled access high-
way, a permit shall not be required for transport of overdimensional
farm implements for the following trips:
(a) From one (1) farm to another;
(b) From a farm to a repair shop or dealer;
(c) From a repair shop or dealer to a farm.
(2) A permit holder or other operator moving overdimensional
farm implements shall comply with the safety requirements set
forth in this administrative regulation.
(3) The following movements of farm implements shall only be
made with the authority of an overdimensional permit:
(a) Manufacturer to dealer;
(b) Dealer to manufacturer;
(c) Dealer to dealer;
(d) Moves on an interstate highway, toll road, or fully-controlled
access highway.
(4) On an interstate highway, toll road, or fully-controlled ac-
cess highway, a self-propelled farm implement shall not be:
(a) Operated; or
(b) Issued a permit for movement.
(5) If the farm equipment to be transported exceeds twelve (12)
feet in width, the farm equipment dealer who holds the annual
permit shall, prior to the proposed move, survey the entire route
proposed to be used for the movement of the overdimensional
farm equipment to confirm the roads are adequate to safely ac-
ccommodate the load.
(6) If there is any doubt of the adequacy of the highway to
safely accommodate the overdimensional farm equipment, the
dealer shall:
(a) Select a different route; or
(b) Contact the appropriate highway district office for clearance
to move the equipment over that specific route.
(7) If the highway district office does not issue clearance for the
use of a particular route whose adequacy is in doubt, that route
shall not be used.

Section 10. Escort Vehicle, Safety and Flag Requirements. (1)
Required escort vehicles shall accompany the overdimensional
vehicle at a distance of 30 feet (91.44 meters) on open highways
and shall:
(a) Maintain radio contact with the load;
(b) Post appropriate signs on the vehicle;
(c) Have amber strobe lights or flashing light on the escort
vehicle; and
(d) Keep its headlamps lit at all times.
(2) In cities or congested areas, the escort vehicle shall travel at a distance closer than 300 feet as necessary to protect other traffic.
(3) On a two (2) lane highway, a vehicle and load with a width in excess of ten (10) feet, six (6) inches (three and two-tenths (3.2) meters) but twelve (12) feet (3.66 meters) or less shall have one (1) lead escort.
(4) On a two (2) lane highway, a vehicle and load with a width exceeding twelve (12) feet (3.66 meters) shall have one (1) lead escort and one (1) trail escort.
(5) On a two (2) lane highway, a vehicle and load traveling at speeds below the average driving speed of traffic on its route shall have one (1) trail escort.
(6) On a four (4) lane or wider highway, a vehicle and load shall have one (1) trail escort if:
   (a) its width exceeds twelve (12) feet (3.66 meters); or
   (b) It does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour).
(7) On a two (2) lane highway:
   (a) A vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters) but not more than eighty-five (85) feet (25.91 meters) shall have one (1) lead escort; and
   (b) A vehicle and load with a length in excess of eighty-five (85) feet (25.91 meters) on a two (2) lane highway shall have one (1) lead and one (1) trail escort.
(8) On a four (4) lane or wider highway:
   (a) A vehicle and load with a length of 120 feet shall have one (1) trail escort; and
   (b) A vehicle and load with a length of 120 feet shall have a front and rear escort.
(9) Red or orange fluorescent flags which are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the auspices of either an overweight or an overwidth permit.
   (a) Vehicles operating overweight shall display four (4) warning flags; one (1) at each of the four (4) corners, and if any portion of the load extends beyond the four (4) corners, additional flags shall be displayed at the widest points of the load.
   (b) Vehicles operating overlength or with a rear end overhang shall display two (2) warning flags at the extreme rear of the vehicle or load. These flags shall be located to indicate maximum width of the rear end.
(10) All vehicles exceeding ten (10) feet, six (6) inches, three and two-tenths (3.2) meters in width or having front overhang shall display two (2) warning signs. The warning signs shall:
   (a) State in black letters on a yellow background, "OVERSIZE LOAD";
   (b) Not be less than seven (7) feet (2.13 meters) long and eighteen (18) inches (0.46 meters) high;
   (c) Have a brush stroke of one and four-tenths (1.4) inches (35.66 millimeters); and
   (d) Be fastened at the front of the power unit and the rear end of the towed unit or at the rear of the load.
(11) If the utility equipment, pole, or pipe being transported exceeds fifty-five (55) feet (16.76 meters) in length, a front escort vehicle shall accompany the vehicle required to be permitted. If the front overhang exceeds ten (10) feet (3.05 meters), an amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use any time the power unit is in operation.
(12) (a) The lighting devices and reflectors set forth in 49 C.F.R. Part 393.11 for pole trailers and projecting loads shall be required.
   (b) Each lamp or light shall be used at all times the vehicle is on or beside a highway.
   (c) A front overhang shall not be allowed on a combination vehicle.
(13) As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lighting or warning flags.
(14) The provisions of this section shall not apply if the vehicle or equipment is less than twelve (12) feet wide and the vehicle or equipment is:
   (a) Used in part for off-road use;
   (b) [-is Not required to be registered or licensed; and
   (c) [-and-is Not transporting cargo.

Section 11. House or Building Permits. (1) Permits for movement of houses or other buildings shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers. An application for a permit to move a house or building shall be made on TC 95-310, House Moving Application, and submitted to the Division of Motor Carriers via mail or hand delivery at 3rd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m., or via fax at (606) 564-9792.
(2) House moving permits shall not be issued unless the movement is done during off-peak hours when other traffic will be least affected. The mover shall be required to furnish all escorts and flagmen required in the interest of public safety.
(3) A permit shall not be issued for movement of any permanent building other than portable storage units on either parkways or interstate highways.
(4) The Division of Motor Carriers shall contact the appropriate Department of Highways' district office for specific routing restrictions or local highway conditions prior to the issuance of the permit. Specific restrictions shall be identified on the permit. Deviation from the restrictions shall void the permit.

Section 12. Route Deviation. All vehicles transporting a load under an annual or trip permit shall obtain prior approval from the Division of Motor Carriers for any deviation from the routes approved by the Transportation Cabinet for the towing vehicle.

Section 13. Permit Required. Until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers under the provisions of this administrative regulation and KRS 189.270:
(1) An overweight/overdimensional load of a width greater than eight and one-half (8 1/2) feet shall not be towed on any state-maintained highway.
(2) An overweight/overdimensional load with a width greater than eight (8) feet shall not be towed on any state-maintained highway not included on the Transportation Cabinet's list of roads approved for passage of motor vehicles with increased dimensions pursuant to 603 KAR 5:070, except as provided in KRS 189.2225(3); and
(3) A manufactured home with a combined length of manufactured home and towing vehicle greater than 120 feet shall not be towed upon any Kentucky highway. The manufactured home shall not exceed eighty-five (85) feet in length.

Section 14. Annual Permits. (1) A permit shall not be issued for the movement of an overweight/overdimensional load in excess of sixteen (16) feet in width inclusive of the usual and ordinary overhang. Mirrors on the towing vehicle shall not be considered in making the determination of width.
(2) Prior to a movement of an overweight/overdimensional load under the provisions of an annual permit, the permit holder shall survey the route and evaluate the entire route proposed to be used for the movement of the overweight/overdimensional load. The evaluation shall include the following:
   (a) Highway width;
   (b) Shoulder width and surface type;
   (c) Bridge width and posted weights;
   (d) Curves;
   (e) Turns to be negotiated;
   (f) Construction zones;
   (g) Obstructions;
   (h) Access control;
   (i) Traffic volume; and
   (j) Other routes available that might be safer even if not as convenient.
(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overweight/overdimensional load. [Also] The permit holder shall determine if there would be any place on the proposed route which
would be too narrow, have curves or turns too sharp or have other obstacles which would prevent the route from safely accommodat-
ing the move. The route selected by the permit holder shall be the safest available.

(4) If there is any doubt about the adequacy of the highway to safely accommodate the overweight/overdimensional load, the permit holder shall either:
(a) Select a different route; or
(b) Contact the appropriate highway district office for clearance to move that overweight/overdimensional load over that specific route.

(5) If the highway district office does not issue clearance for the use of a route whose adequacy is in doubt, that route shall not be used.

(6) An annual permit shall not be issued or used for the movement if the height of the combination load and towing vehicle exceeds thirteen (13) feet, six (6) inches.

(7) Acceptance and use of the annual permit shall indicate [as] the permit holder's acceptance of the liability associated with the move.

(8) Moves of overweight/overdimensional loads more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Department of Vehicle Regulation, Division of Motor Carriers to be used to the unit's ultimate destination. The department shall deny movements on any routes deemed unsuitable for move.

(9) The issuance cost of an annual and trip permit shall be that established by KRS 189.270.

Section 15. Traffic Control. (1) If an overweight/overdimensional load while crossing a bridge would encroach on any other lane of traffic:
(a) All approaching traffic shall be stopped; and
(b) All trailing traffic shall be prevented from attempting to pass the overweight/overdimensional load until the load has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.

(2) An overweight/overdimensional load shall slow the movement of other traffic as little as possible. If traffic backs up either behind or in front of the load being moved, the escort vehicles and load shall exit the highway if there is sufficient space to do so.

Section 16. Permit Validity. (1) Except as provided in subsection (4) of this section, travel may not be permitted from 6 a.m. to 9 a.m.; and from 3 p.m. to 6 p.m.; Monday through Friday.

(2) Any vehicle hauling building materials to a home or home site shall be allowed to travel fifteen (15) miles off of any state highway classified to carry the registered weight of the vehicle for purpose of delivery.

(a) The [first] vehicle shall:
1. [Will not be required to have a permit for overweight or overlength; and]
2. [However, the vehicle must be within the limits of the registration and within axle weight limits.]
3. [An operator shall be required to provide a bill of lading when engaged in the transportation of home building materials.]

(b) [is] Travel on all overweight and overdimensional permits shall not be permitted in Boone, Kenton, Campbell, Fayette, Jefferson County (Louisville) or at the Owensboro, Kentucky 2155 bridge from 7 a.m. to 9 a.m., and from 4 p.m. to 6 p.m. Monday through Friday.

(c) [Except for permits referenced in subsections (5) and (6) of this section, permits shall be valid during:

(1) Daylight hours; and

(b) From Monday through Saturday.

(2) Travel shall not be permitted from noon of the day preceding a national holiday until daylight of the next permissible day.

(3) On the national holiday, the restricted period shall extend from noon of the preceding Friday to daylight of the following Monday.

(4) If the national holiday occurs on Sunday, the restricted period shall extend from noon of the preceding Friday to daylight of the following Tuesday.

(5) Permits used for the movement of mobile homes greater than fourteen (14) feet wide shall only be valid Monday through Friday between the hours of 9 a.m. and 3 p.m. and between 6 p.m. and one half (1/2) hour after sundown local prevailing time. Permits used for the movement of mobile homes greater than fourteen (14) feet wide shall not be valid on Saturday or Sunday.

(6) In Jefferson, Fayette, Boone, Kenton and Campbell Counties permits used for the movement of a mobile home fourteen (14) feet wide or less but more than twelve (12) feet wide shall only be valid between the hours of 9 a.m. and 3 p.m. and from 6 p.m. to one half (1/2) hour after sundown, local prevailing time.

(7) If satisfactory proof of an emergency is furnished to the Division of Motor Carriers, moves may be authorized during the restricted hours restricted pursuant to KRS 189.270(11)(a) [189.222].

(8) A permit shall not be valid if the combined gross weight of the towing vehicle and load exceeds the registered weight of the towing vehicle.

(c) The provisions of this section shall not apply to farm implements or equipment as defined in Section (4) of this administrative regulation if the farm implement or equipment:
(i) Is less than eighteen (18) feet wide;
(ii) Is used in part for off-road use; and
(iii) Is not transporting cargo.

(b) Travel shall not be made in all other provisions of this administrative regulation notwithstanding, no travel is permitted in excess of the posted limitations on any bridge or other highway structure.

Section 17. Weather Conditions. Moves of overweight/overdimensional loads more than twelve (12) feet wide shall not be made on any highway:
(1) If wind velocity exceeds twenty-five (25) MPH; or
(2) If adverse weather conditions or road conditions would cause these moves to be dangerous.

Section 18. Brakes. (1) The number, type, size and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour does not exceed forty (40) feet.

(2) Manufactured homes which are not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assemblies to meet the braking distance specified in this section.

(a) This certification shall be in the form of a manufacturer's statement, documented technical data, or adequate engineering analysis or its equivalent, specifying that the braking distance requirement has been met.

(b) This certificate shall be carried in the towing unit at all times and shall be presented upon request, to any law enforcement officer.

Section 19. Annual Farm Equipment Permits. (1) An annual permit shall not be issued for the movement of the following:
(a) Self-propelled farm equipment which exceeds thirteen (13) feet eleven (11) inches in width;
(b) Motor vehicle transporting farm equipment if the vehicle or load exceeds thirteen (13) feet eleven (11) inches in width unless the transporter is a farm equipment dealer transporting farm equipment from his dealership to a farm or from a farm to his dealership;
(c) A motor vehicle transporting farm equipment which exceeds six (6) feet in width;
(d) Farm equipment if the length of the trailer and towing unit combined exceeds ninety-five (95) feet in length;
(e) Farm equipment if the length of the straight truck and load exceeds fifty-five (55) feet;
(f) A motor vehicle transporting farm equipment if the power unit does not have sufficient horsepower or braking capacity to safely handle the load being transported;
(2) A permit for the movement of farm equipment with a width greater than twelve (12) feet but which does not exceed sixteen (16) feet shall only be:
Section 21. Denial of Permit Application. (1) In accordance with 23 C.F.R. 658.17, the Transportation Cabinet, Division of Motor Carriers, shall deny a permit application if:
(a) The route includes any portion of the interstate highway system; and
(b) The load is divisible.
(2) The Transportation Cabinet may deny or restrict a permit for the use of any route if it would be detrimental to public safety or convenience. The Transportation Cabinet shall consider the following when making the determination on the application:
(a) The strength of all bridges and structures on the route;
(b) Traffic congestion on the route;
(c) Horizontal and vertical alignment of the route;
(d) The availability of alternate routes that afford greater safety;
(e) Urban development in residential and commercial areas on the route;
(f) The proximity of schools to the route; and
(g) Any other condition that would unduly compromise public safety and convenience.

Section 22. Incorporation [Material Incorporated] by Reference. (1) The following material is incorporated by reference:
(a) The Multistate Permit Agreement for Oversize and Overweight Vehicles, March 1999 edition;
(b) 23 C.F.R. [Part] 658.17, Truck Size and Weight, Route Designations - Length, Width and Weight Limitations, April 1, 2000;
(c) 49 C.F.R. [Part] 393.11, Lighting Devices, Reflectors, and Electrical Equipment, October 1, 2000; and
(d) Application for Annual Overweight/Oversized Permit, TC 95-25, July 1998; and
(e) Form TC 95-310, House Moving Application, July 2003 edition.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Motor Carriers, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. The telephone number is (502) 564-4540.

WILLIAM M. BUSHART, Commissioner
JAMES C. CODELL, III, Secretary
APPROVED BY AGENCY: October 6, 2003
FILED WITH AGENCY: October 9, 2003 at 1 p.m.
CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

TRANSPORTATION CABINET
Department of Vehicle Regulation
(As Amended at ARRS, March 9, 2004)

601 KAR 9:085. Procedures for becoming a certified motor vehicle inspector.

RELATES TO: KRS 186A.115
STATUTORY AUTHORITY: KRS 186A.115(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.11(6) requires the department to promulgate an administrative regulation establishing certification requirements for certified inspectors. This administrative regulation establishes the [sets forth] requirements for becoming [by which a person shall become] a certified motor vehicle inspector.

Section 1. [The requirements for an individual] To become a certified motor vehicle inspector, an applicant shall comply with the requirements established in this section. [are]
(1) The sheriff of the county for which the individual is to be certified shall submit [designate] the following information to the commissioner:
(a) Name of sheriff;
(b) Designation of sheriff or sheriff elect;
(c) County [Count] in which sheriff was elected;
(d) Sheriff's Social Security number;
(g) Date the [document] form was executed by the sheriff; and
(h) Proposed inspector's:
1. Name;
2. Business mailing address;
3. County of residence;
4. Business and residence telephone numbers;
5. Current designation as certified inspector including inspector number and county, if applicable;
6. Prior inspector training and date, if applicable; and
7. Certification that he has attended the training [satisfactorily completed the program] to become a certified inspector required by subsection (4) of this section [set forth in Section 2 of this administrative regulation].
(2) An applicant for certification or a certified motor vehicle inspector shall:
(a) Be at least eighteen (18) years of age;
(b) Have reached his 18th birthday.
(3) A certified motor vehicle inspector shall [be a resident] Be a resident of the Commonwealth of Kentucky [county for which he is certified]; [and]
(4) [If] A designee shall Not have a felony criminal record; [and]
(5) [If] A designee shall [be] Not have any pending felony charge at the time of his designation; and [and]
(6) A designee shall [not] Not have a misdemeanor conviction or pending charge relating to KRS Chapter 516, forgery and related offenses or to KRS Chapter 523, perjury and related offenses.
(7) A licensed motor vehicle dealer or any employee in his dealership shall not be eligible to become a certified motor vehicle inspector.

An applicant [will] The designee shall attend [satisfactorily complete] a training program conducted by the Department of Vehicle Regulation in conjunction with the Kentucky State Police.

Section 2. After the applicant has attended the training required by Section 1(4) of this administrative regulation [designee has satisfactorily completed the program], the Commissioner of the Department of Vehicle Regulation shall issue a certificate certifying the applicant [designee] to serve as a certified motor vehicle inspector.

Section 3. (1) The county sheriff may withdraw a designation at any time by notifying, in writing, the Commissioner of the Department of Vehicle Regulation.
(2) When notification of withdrawal of designation is received by the Department of Vehicle Regulation, the commissioner shall revoke the individual's certification.

Section 4. A certified motor vehicle inspector shall not be allowed to inspect a motor vehicle after his certification has been suspended or revoked.

Section 5. Upon written notice to the county sheriff, the Commissioner of the Department of Vehicle Regulation or the Kentucky State Police acting through the department may require additional in-service training or recertification of any certified motor vehicle inspector.

Section 6. The Commissioner of the Department of Vehicle Regulation with sufficient cause may revoke or suspend the certification of any certified inspector. Sufficient cause [includes but is not limited] to a conviction or pending charge of a felony or a misdemeanor relating to perjury or forgery or failure to
satisfactorily complete the training required in Section 14(1) (2)(2) of this administrative regulation.

Section 7. (1) At least thirty (30) days prior to revoking or suspending a certificate, the department shall notify the certified inspector in writing of the action the department proposes to take and the reasons therefor.

(2) A certified inspector [so-nominated] may appeal the action within forty-five (45) days.

(3) The notice of appeal shall be in writing to the commissioner and shall set forth the basis for the appeal.

(4) An appeal shall be conducted in accordance with KRS Chapter 13B.

Section 8. (1) The commissioner shall designate an appropriate time and place to conduct the hearing.

(2) The hearing shall be held within sixty (60) days after receipt of the appeal.

(3) The appellant shall be notified at least ten (10) working days in advance of the time and place designated for the hearing.

(4) The commissioner shall within ninety (90) days after an appeal is filed, issue a final order for the disposition thereof.

(5) At the hearing the appetant shall have the right to be heard publicly and to be represented by counsel to present evidentiary facts.

(6) At the hearing, technical rules of evidence shall not apply.

Section 9. If a sheriff is vacated from office [in any county] and there is not a certified inspector available in the county, the Commissioner of the Department of Vehicle Regulation may designate a temporary certified inspector until the time a new sheriff takes office.

MACK BUSHART, Commissioner
JAMES C. CODELL, III, Secretary
APPROVED BY AGENCY: October 6, 2003
FILED WITH LRC: October 9, 2003 at 1 p.m.
CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5236.

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(As Amended at ARRS, March 9, 2004)

603 KAR 5:06S. Weight (mass) limits for trucks.

RELATES TO: KRS 189.222(10), 23 C.F.R. 658
STATUTORY AUTHORITY: KRS 174.080, 189.222, 23 C.F.R. 658

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.222(10) authorizes the Secretary of Transportation to establish reasonable weight (mass) limits for trucks using the state maintained highway system. This administrative regulation prescribes the maximum weight (mass) limits for each classification of roads in accordance with state and federal laws. These weights may only be exceeded if an overweight permit has been issued for the operation of a motor vehicle by the Transportation Cabinet.

Section 1. Highway Classifications and Truck Types. (1) Trucking highways. All state maintained roads are assigned a classification in 603 KAR 5:301. Unless the motor vehicle being operated has been issued an overweight permit by the Transportation Cabinet, the maximum allowable gross weight (mass) for each classification shall be [as] follows:

(a) Class "AAA" shall have [designates] a maximum allowable gross weight (mass) of 80,000 pounds (36,287.36 kilograms).

(b) Class "AA" shall have [designates] a maximum allowable gross weight (mass) of 62,000 pounds (26,122.70 kilograms).

(c) Class "A" shall have [designates] a maximum allowable gross weight (mass) of 44,000 pounds (20,090.05 kilograms).

(2) Truck types. For the purpose of posting bridges at the site and for listing bridge weight (mass) restrictions in this [these] administrative regulation [regulations], the following truck types shall be used [have been established]:

(a) Type 1. This shall be [is] a single unit truck consisting of two (2) single axles.

(b) Type 2. This shall be [is] a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.

(c) Type 3. This shall be [is] a truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.

(d) Type 4. This shall be [is] a tractor-semitrailer combination truck consisting of five (5) or more axles.

(3) Trucks with an axle combination not covered in subsection (2) of this section may be restricted by weight (mass) based on their axle spacing and weight (mass) distribution per axle in accordance with state and federal law. Information on those restrictions shall be available from the Division of Motor Carriers, Overweight and Overdimensional Permit Section.

(4) There are numerous other axle combinations not covered in these basic truck types that are restricted by weight (mass) based on their axle spacing and weight (mass) distribution per axle.

Section 2. "AAA" Highways Except Interstates. The maximum weight (mass) limits for trucks using Class "AAA" highways, except the Interstate System, shall be as follows:

(1) Gross weight (mass), including load, shall not exceed 80,000 pounds (36,287.36 kilograms).

(2) Gross axle weight (mass) for a single axle shall not exceed 20,000 pounds (9071.84 kilograms) (with axles less than forty-two (42) inches (1.07 meters) apart), or shall be considered as a single axle.

(3) Gross weight (mass) shall not exceed 34,000 pounds (15,027.13 kilograms) on two (2) axles in tandem arrangement which are spaced forty-two (42) inches (1.07 meters) or more apart, and ninety-six (96) inches (2.44 meters) or less apart.

(4) Gross weight (mass) shall not exceed 48,000 pounds (21,772.42 kilograms) on three (3) axles in tridem arrangement if the distance between axles one (1) and three (3) is more than sixty-nine (69) inches (2.44 meters) but less than one hundred and twenty inches (3.05 meters), and the distance between any two (2) adjacent axles of the tridem is forty-two (42) inches (1.07 meters) or more.

(5) Gross weight (mass) shall not exceed 34,000 pounds (15,027.13 kilograms) on three (3) axles in tridem arrangement if the distance between the centers of axles one (1) and three (3) is ninety-six (96) inches (2.44 meters) or less.

(6) The maximum gross weight (mass) allowed on a vehicle with any other axle configuration shall be established by the bridge weight formula:

\[ W = \frac{500}{W_\text{equals}} - \frac{L}{W_\text{equals}} \times \frac{L_\text{equals}}{W\text{equals}} = \frac{500}{W_\text{equals}} + \frac{L}{W\text{equals}} \times \frac{L_\text{equals}}{W\text{equals}} \]

Where \( W\) equals gross weight, \( L\) equals distance in feet between the extreme axles of the group of consecutive axles under consideration, and \( W_\text{equals}\) equals the number of axles in the group. The load on any single axle in any arrangement shall not exceed 20,000 pounds (9071.84 kilograms) and the gross weight (mass) shall not exceed 80,000 pounds (36,287.36 kilograms). Any axle which is not included in one (1) of the combinations set forth in this subsection shall be steerable.

(7) Tire weight (force). The weight (force) transmitted to the pavement shall not exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches (meters) established from the manufacturer’s stamped tire measurement for all tires.

(8) On Class "AAA" highways if a structure or bridge has a posted load limit of less than 80,000 pounds (36,287.36 kilograms), the posted limit shall not be exceeded.

Section 3. Interstate Highways. The maximum weight (mass) limits for trucks using Class "AAA" highways which are a part of the Interstate System shall be as established in this section as follows:

(1) Gross weight (mass), including load, shall not exceed 80,000 pounds (36,287.36 kilograms).

(2) Gross axle weight (mass) for a single axle shall not exceed 20,000 pounds (9071.84 kilograms) (with axles less than forty-two (42) inches (1.07 meters) apart).
(42) inches (1.07 meters) apart to be considered as a single axle). [3]

(3) Gross weight (mass) shall not exceed 34,000 pounds (15,422.13 kilograms) on two (2) axles in tandem arrangement which are spaced forty-two (42) inches (1.07 meters) or more apart and ninety-six (96) inches (2.44 meters) or less apart. [3]

(4) Gross weight (mass) shall not exceed 34,000 pounds (15,422.13 kilograms) on three (3) axles in tridem arrangement if the distance between the centers of one (1) and three (3) is ninety-six (96) inches (2.44 meters) or less. [3]

(5) Gross weight (mass) shall not exceed 48,000 pounds (21,772.42 kilograms) on three (3) axles in tridem arrangement if the distance between the centers of one (1) and three (3) is more than ninety-six (96) inches (2.44 meters) but less than 120 inches (3.05 meters), and the distance between any two (2) adjacent axles of the tridem is forty-two (42) inches (1.07 meters) or more, and the gross weight (mass) of the vehicle is less than or equal to 73,280 pounds (33,239.22 kilograms). [3]

(6) The maximum gross weight (mass) allowed on two (2) consecutive sets of tandem axles shall be 34,000 pounds (15,422.13 kilograms) each, if the distance between the first and last axle of the consecutive sets of axles is thirty-six (36) feet (10.98 meters) or more. [3]

(7) The maximum gross weight (mass) allowed on a vehicle with any other axle configuration shall be established by the bridge weight formula:

\[ W = 500 \left( \frac{L}{N-1} + 12N + 36 \right) \]

Where \( W \) equals gross weight, \( L \) equals distance in feet between the extreme axles of the group of consecutive axles under consideration and \( N \) equals the number of axles in the group. The load on any single axle in any arrangement shall not exceed 20,000 pounds (9071.84 kilograms) and the gross weight (mass) shall not exceed 80,000 pounds (36,287.36 kilograms). Any axle which is not included in one (1) of the combinations set forth in this subsection shall be steerable.

(8) Tire weight (force). The weight (force) transmitted to the pavement shall not exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches (meters) established from the manufacturer’s stamped tire measurement of all tires.

(9) On Class “AAA” highways which are part of the interstate system if a structure or bridge has a posted load limit of less than 80,000 pounds (36,287.36 kilograms), the posted limit shall not be exceeded.

(10) Tolerances shall not be allowed on gross weight (mass), axle weight (mass), or combinations of axle weights (mass) on vehicles operating over a Class “AAA” highway which is a part of the Interstate System.

Section 4. “AA” Highways. The maximum weight (mass) for trucks using Class “AA” highways shall be as established in this section follows:

(1) Gross weight (mass), including load, shall not exceed 62,000 pounds (28,122.77 kilograms). [3]

(2) Gross axle weight (mass) for a single axle shall not exceed 20,000 pounds (9071.84 kilograms) (with axles less than forty-two (42) inches (1.07 meters) apart to be considered as a single axle). [3]

(3) Gross weight (mass) shall not exceed 34,000 pounds (15,422.13 kilograms) on two (2) axles in tandem arrangement which are spaced forty-two (42) inches (1.07 meters) or more apart and ninety-six (96) inches (2.44 meters) or less apart. [3]

(4) Gross weight (mass) shall not exceed 34,000 pounds (15,422.13 kilograms) on three (3) axles in tridem arrangement if the distance between the centers of one (1) and three (3) is ninety-six (96) inches (2.44 meters) or less. [3]

(5) Gross weight (mass) shall not exceed 48,000 pounds (21,772.42 kilograms) on three (3) axles in tridem arrangement if the distance between the centers of one (1) and three (3) is more than ninety-six (96) inches (2.44 meters) but less than 120 inches (3.05 meters) apart and the distance between any two (2) adjacent axles of the tridem is forty-two (42) inches (1.07 meters) or more. [3]

(6) Tire weight (force). The weight (force) transmitted to the pavement shall not exceed 700 pounds (317.51 kilograms) times the aggregate width in inches (meters) established from the manufacturer’s stamped tire measurement of all tires.

(7) On Class “AA” highways if a structure or bridge has a posted load limit of less than 52,000 pounds (28,122.77 kilograms), the posted limit shall not be exceeded.

(8) The maximum gross weight (mass) allowed on a vehicle with any other axle configuration shall be established by the bridge weight formula:

\[ W = 500 \left( \frac{L}{N-1} + 12N + 36 \right) \]

Where \( W \) equals gross weight, \( L \) equals distance in feet between the extreme axles of the group of consecutive axles under consideration and \( N \) equals the number of axles in the group. The load on any single axle in any arrangement shall not exceed 20,000 pounds (9071.84 kilograms) and the gross weight (mass) shall not exceed 62,000 pounds (28,122.77 kilograms). Any axle which is not included in one (1) of the combinations set forth in this subsection shall be steerable.

Section 5. “A” Highways. The maximum weight (mass) limit for trucks using Class “A” highways shall be as established in this section follows:

(1) Gross weight (mass), including load, shall not exceed 44,000 pounds (20,090.05 kilograms).

(2) Gross axle weight (mass) for a single axle shall not exceed 20,000 pounds (9071.84 kilograms) (with axles less than forty-two (42) inches (1.07 meters) apart to be considered as a single axle).

(3) Gross weight (mass) shall not exceed 34,000 pounds (15,422.13 kilograms) on two (2) axles in tandem arrangement which are spaced forty-two (42) inches (1.07 meters) or more apart and ninety-six (96) inches (2.44 meters) or less apart.

(4) Tire weight (force). The weight (force) transmitted to the pavement shall not exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches (meters) established from the manufacturer’s stamped tire measurement of all tires.

(5) On Class “A” highways if a structure or bridge has a posted load limit of less than 44,000 pounds (20,090.05 kilograms), the posted limit shall not be exceeded.

(6) The maximum gross weight (mass) allowed on a vehicle with any other axle configuration shall be established by the bridge weight formula:

\[ W = 500 \left( \frac{L}{N-1} + 12N + 36 \right) \]

Where \( W \) equals gross weight, \( L \) equals distance in feet between the extreme axles of the group of consecutive axles under consideration and \( N \) equals the number of axles in the group. The load on any single axle in any arrangement shall not exceed 20,000 pounds (9071.84 kilograms) and the gross weight (mass) shall not exceed 44,000 pounds (20,090.05 kilograms). Any axle which is not included in one (1) of the combinations set forth in this subsection shall be steerable.

Section 6. Tolerance. There shall not be a tolerance allowed on gross weight (mass), however, a tolerance of not more than five (5) percent shall be allowed on axle weight (mass) on all state-maintained highways which are not a part of the interstate system.

Section 7. (1) As long as [any] highway remains a part of the state-maintained system, as established in [defined by] administrative regulation 603 KAR 3:330, the classification of that highway in [administrative regulation] 603 KAR 5:301 shall constitute a designation by the Secretary of Transportation as contemplated by KRS 189.280.

(2) City ordinances which impose less stringent limits than this administrative regulation shall not apply to the state-maintained highways, including bridges, unless specific relinquishment of this responsibility to a city is made by the Secretary of Transportation.

JAMES C. CODELL, III, Commissioner and Secretary
APPROVED BY AGENCY: October 7, 2003
FILED WITH LRC: October 9, 2003 at 1 p.m.
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TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Traffic
(As Amended at ARR, March 9, 2004)

603 KAR 5:070. Motor vehicle dimension limits.

 Statutory Authority: KRS 189.222(1), (9), 23 C.F.R. Part 658

Necessity, function, and conformity: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the State Primary Road System, which includes the roads maintained by the Department of Highways. 23 C.F.R. 658.19 The federal regulation strongly suggests that the states allow the motor vehicles with increased dimensions to operate with a gross weight of up to 80,000 pounds (36,287-36 kilograms) where the motor vehicles with increased dimensions are allowed. The federal regulation also requires that vehicles with increased dimensions transporting household goods and truck tractors towing only one (1) semitrailer not exceeding twenty-eight (28) feet (8.5 meters) in length be provided statewide access unless a route is specifically excluded for safety reasons. This administrative regulation establishes the motor vehicle and combination vehicle dimensions for all classes of highways in Kentucky. [The federal regulation] 23 C.F.R. Part 658 sets forth the highways available for use by increased dimensions. This administrative regulation includes these highways as well as others which have been constructed to accommodate the motor vehicles with increased dimensions. In addition, 23 C.F.R. 658.19 requires each state to allow the increased dimension vehicles to operate within one (1) driving mile (1.6 kilometers) of the designated highways. On state-maintained highways in Kentucky, the increased dimension vehicles are allowed to operate within five (5) driving miles (8.05 kilometers) of a designated highway unless the designated highway is an interstate or a parkway in which instance the increased dimension vehicles are allowed to operate within fifteen (15) miles (24.14 kilometers) of the interstate or parkway exit. The bus dimension limits are established in 603 KAR 5:071.

Section 1. Definitions. (1) "Length exclusion safety device" means an appurtenance:
   (a) That is located at the front or rear of a motor vehicle semitrailer or trailer;
   (b) Whose function is related to the safe and efficient operation of the semitrailer or trailer; and
   (c) That is not designated, designed or used for carrying cargo.
   (2) "National Truck Network" means the network of highways:
      (a) On which vehicles authorized by the provisions of 49 U.S.C. 31111 are allowed to operate pursuant to KRS 189.222 and 23 C.F.R. 658; and
      (b) Included in [and in accordance with KRS 189.222(1), the secretary shall issue] an official order
          issued by:
          1. The secretary:
             2. Establishing the current network list which shall be:
                (a) Maintained on the Transportation Cabinet website at www.kytc.state.ky.us/planning/index.htm; and
                3. [b] Available in hard copy upon request at the Division of Vehicle Enforcement.
   (3) "Width exclusion safety device" means an appurtenance:
      (a) That is located at the side of a motor vehicle semitrailer or trailer;
      (b) Whose function is normally related to the safe and efficient operation of the semitrailer or trailer; and
      (c) That is not designated, designed or used for carrying cargo.

Section 2. Width Exclusion Safety Devices. (1) The following items shall be designated as a width exclusion safety device:
   (a) Rearview mirrors;
   (b) Turn signal lamps;
   (c) Hand holds for cab entry or egress;
   (d) Splash and spray suppressent devices; and
   (e) Load induced tire bulge.
   (2) The following items shall be designated as width exclusion safety devices if they do not extend beyond three (3) inches (0.0762 meter) on either side of the vehicle:
      (a) Corner cap;
      (b) Rear or side door hinges and their protective hardware;
      (c) Rain gutters;
      (d) Side marker lamps;
      (e) Lift pads for a piggyback trailer;
      (f) Hazardous materials placards;
      (g) Tarp and tarp hardware;
      (h) Tie-down assembly on a platform trailer;
      (i) Wall variation from true flat; and
      (j) Weevil pins or sockets on a low bed trailer.

Section 3. Except as provided in Section 4 of this administrative regulation, the maximum dimensions for a motor vehicle or combination motor vehicle, except a bus, using a public highway in Kentucky shall be as follows:
   (1) Height: including body and load, not to exceed thirteen (13) feet and six (6) inches (4.115 meters).
   (2) Width: including body and load, not to exceed eight (8) feet (2.44 meters), excluding a width exclusion safety device.
   (3) Length. Except as provided in subsection (4) of this section:
      (a) The length of a single unit motor vehicle, including a part of the body or load, and excluding a length exclusion safety device, shall not exceed forty-five (45) feet (13.716 meters).
      (b) A motor vehicle and trailer or semitrailer combination, including a part of the body or load, and excluding a length exclusion safety device, shall not exceed sixty-five (65) feet (19.812 meters).
      (4) Length exceptions:
         (a) If a truck tractor or semitrailer unit is exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot (0.915 meters) front and four (4) foot (1.22 meters) rear overhang shall not be included in the measurement of the sixty-five (65) feet (19.812 meters) limit established in subsection (3)(b) of this section;
         (b) A single unit motor vehicle transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet (13.716 meters) shall be allowed to operate on the public highways of Kentucky.
   (5) Weight.
      (a) The gross weight limit is established in 603 KAR 5:066.
      (b) The axle weight limit and the bridge weight formula are established in 603 KAR 5:066.

Section 4. (1) A motor vehicle or a combination motor vehicle, except a bus, with dimensions greater than those specified in Section 3 of this administrative regulation that does not exceed the dimensions established in subsection (2) of this section may be operated without an overweight or overdimensional permit on the following highways:
   (a) The National Truck Network;
   (b) The fifteen (15) mile (24.14 kilometers) access authorized in KRS 189.222(1)(a);
   (c) The five (5) mile (8.05 kilometers) access authorized in Section 5(2) of this administrative regulation; and
   (d) [6] The one (1) mile (1.61 kilometers) access authorized in Section 5(3) of this administrative regulation.
   (2) A motor vehicle, combination motor vehicle, or towed unit, including any [a] part of the body and load, and excluding a length or width exclusion safety device, shall not exceed, without an overdimensional permit, the following width and length dimensions if operating on the National Truck Network:
      (a) Width - 102 inches (2.59 meters).
      (b) Length of a towed unit:
         1. Fifty-three (53) feet (15.914 meters) when operated in a [if operated in tractor-and single semitrailer combination.
         2. Twenty-eight (28) feet (8.53 meters) if operated in a tractor- semitrailer-trailer combination or a tractor-semitrailer-semitrailer combination not to exceed two (2) towed units per combination.
         3. Twenty-eight (28) feet (8.53 meters) if operated in a truck-trailer combination.
      (4) There shall not be an overall length limitation on a motor vehicle or combination motor vehicle if the requirements estab-
lished in this subsection are met.

4. [6] In a tractor semitrailer-semitrailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length.
5. [6] If there is not a second semitrailer mounted to the fifth wheel of the rear frame of a semitrailer, the length of the extension shall be included in the length measurement for the semitrailer.

3. The gross vehicle weight limit for a motor vehicle with the dimensions established in subsection (2) of this section while operating on a highway segment established in Section 5 of this administrative regulation shall be 80,000 pounds (36,287.36 kilograms) except the axle weight limits and bridge weight limits established in 603 KAR 5:066 shall not be exceeded.

4. The dimensions and weights specified in this section shall not be subject to an enforcement tolerance.

Section 5. (1) Operation of motor vehicles with increased dimensions that do not exceed the limitations established in Section 4 of this administrative regulation shall be allowed on all highways included in the National Truck Network.

2. Except as provided by Section 8 of this administrative regulation, a motor vehicle with an increased dimension as established in Section 4 of this administrative regulation shall be allowed five (5) miles (8.05 kilometers) on a state-maintained highway from a highway segment established as part of the National Truck Network and fifteen (15) miles (24.14 kilometers) from an interstate or parkway exit to attain reasonable access to a terminal or facility for food, fuel, repairs, or rest.

Section 6. (1) Household Goods Transporters. A motor vehicle with an increased dimension as established in Section 4 of this administrative regulation that is used to transport household goods by a motor carrier certificated by either the Federal Motor Carrier Safety Administration [Surface Transportation Board] or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.

2. Single unit semitrailers. A motor vehicle with an increased dimension as established in Section 4 of this administrative regulation that consists of a truck tractor and single semitrailer which does not exceed twenty-eight (28) feet excluding a length exclusion safety device shall have access to any public roadway in the Commonwealth of Kentucky.

3. Recreational vehicle. A recreational vehicle which has a registration—license—plate issued pursuant to KRS 186.050(14); 186.655, or an equivalent statute from another licensing jurisdiction shall have access to any public state-maintained roadway in the Commonwealth of Kentucky if the dimensions of the recreational vehicle do not exceed those established in Section 4 of this administrative regulation. This shall not be considered a waiver of the weight restrictions of a highway.

Section 7. Nonstate Maintained Exceptions to One (1) Mile (1.61 Kilometers) Automatic Access. The city of Anchorage in Jefferson County has adopted ordinances which exempt for safety reasons certain locally maintained roadways from the automatic one (1) mile (1.61 kilometers) access provision of Section 5(3) of this administrative regulation: The streets all within the corporate city limits of Anchorage listed in the city ordinance which shall not be used by a motor vehicle with an increased dimension as established in Section 4 of this administrative regulation shall be:

1. Evergreen Road;
2. Bellevue Road;
3. Lucas Lane; and
(4) Old Harris Creek Road.

Section 8. State-maintained Exceptions to Automatic Five (5) Mile (8.05 Kilometers) and fifteen (15) mile (24.14 kilometers) Access. The Department of Highways has found the following road segment for safety reasons to be exempt from the five (5) mile (8.05 kilometers) and fifteen (15) mile (24.14 kilometers) automatic access on a state-maintained highway as established in Section 5(2) of this administrative regulation. These road segments shall not be used by a vehicle with an increased dimension as established in Section 4 of this administrative regulation:

1. Kentucky 146 - from the west boundary of the city of Anchorage at milepost 4.258 to the east boundary of the city of Anchorage at milepost 5.878;
2. Kentucky 418 - from milepost 2.892 at the intersection with the Blue Sky Parkway just southeast of the I-75 interchange in Fayette County to milepost 6.089 at the Fayette/Clark County line;
3. Kentucky 1973 - from milepost 0.000 at the intersection with US 25 to milepost 1.866 at its intersection with Kentucky 418, all in Fayette County; and
4. US 119 in Letcher County from its junction with Kentucky 932 (MP 10.065) northeast of Oven Fork to Kentucky 15 (MP 17.308) in Whitesburg.


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WILLIAM M. BUSHART, Commissioner
JAMES C. CODELL, III, Secretary
APPROVED BY AGENCY: October 6, 2003
FILED WITH LRC: October 9, 2003 at 1 p.m.
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Charitable Gaming
Division of Licensing and Compliance
(As Amended at ARR'S, March 9, 2004)

820 KAR 1:001. Definitions for 820 KAR Chapter 1.

RELATES TO: KRS 238.500-238.995
STATUTORY AUTHORITY: KRS 238.515(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the Department of Charitable Gaming to promulgate administrative regulations to carry out the provisions of the chapter. This administrative regulation establishes definitions of terms used throughout 820 KAR Chapter 1. [KRS 238.505(26)] defines the term "card-playing device"—KRS 238.505(1)(b) authorizes licensed charitable organizations to provide card-playing devices for use by bingo players. That section also directs the department to promulgate an administrative regulation concerning the use and control of these devices. These are the definitions needed for that regulation.

Section 1. Definitions. (1) "Account number" means the unique identification number, if any, provided by a card-playing device system to a customer that uses a card-playing device to play bingo.

2. "Bet block" means an area which indicates the dollar amount of the wager.

(3) [23] "Card" or "face" means a card or paper or an electronic representation containing:
(a) Five (5) rows of five (5) squares with [twenty-four-(24)-pre-printed] numbers or symbols;
(b) A free center space; and
(c) The letters "B", "l", "N", "G", "O" printed in order over the five (5) columns; and
(d) A unique perm number identifying each card or face
[Each card or face shall be identifiable by a unique perm number].

(4) [(9)] "Cash" means currency, coinage or a negotiable in-
strument.

(5) "Checksum or digital signature" means methods by which
data, as in a software application, is expressed in a calculated
number which is used to verify the accuracy of the data or a copy
of the data.

(6) [(4)] "Conditioning" means a restatement of:
(a) How many numbers or combinations of numbers are being
selected by the players;
(b) The way in which the numbers are being wagered; and
(c) The corresponding dollar amount wagered.

(6) [(7)] [(6)] "Covered" means daubed or smeared with indelible
ink if using a disposable paper bingo card, or marked electronically
if using a card-minding device.

(7) [(6)] "Custom card-minding device" means a card-minding
device that uses proprietary software and hardware:
(a) That is either manufactured or customized by the manu-
facturer; or
(b) [For over-the-production] Of which the manufacturer con-
trols its production [has control].

(8) [(9)] [(6)] "Deal" means each separate game or series of
charity game tickets with the same serial number.

(9) [(40)] [(23)] "Designator" means an item:
(a) Upon which bingo letters and numbers are imprinted; and
(b) Used in the number selection process.

(10) "Digital signature" means methods by which data, as
in a software application, is expressed in a calculated number
which is used to verify the accuracy of the data or a copy of
the data.

(11) [(6)] "Disposable paper bingo card" means a nonreusable,
paper bingo card:
(a) Bearing preprinted numbers; and
(b) Assembled in a:
1. Multiple card sheet;
2. Single sheet;
3. Pad; or
4. Packet form.

(12) [(9)] "Draw ticket" means a blank ticket upon which the
numbers selected [randomly selected] are marked as they are randomly
on a blank ticket as the numbers are selected.

(13) [(40)] "EPROM" means Erasable Programmable ROM.

(14) [(41)] "Exception log" means a record documenting a prize
payout that has not been authorized by the computer.

(15) [(42)] "Flare" means a piece of paper, cardboard or similar
material that bears printed information relating to the:
(a) Number of prizes to be awarded; and
(b) Specific prize amounts in a particular deal of charity game
tickets.

(16) [(43)] "Inside ticket" means a blank Keno ticket:
(a) Constructed with eighty (80) blocks numbered one (1)
through eighty (80); and
(b) Containing a bet block.

(17) [(44)] "Keno" means a numbers game in which:
(a) A participant chooses from one (1) to ten (10) numbers
from a pool of eighty (80) numbers; and
(b) The winner and the [his] prize is determined by correctly
matching the participant's [his] numbers to the twenty (20)
numbers generated in the game.

(18) [(45)] "Keno equipment" means [a]:
(a) Electronic selection device;
(b) Random number generator;
(c) Computerized Keno system; or
d) Integrated system of computer hardware and software that:
1. Generates a player ticket;
2. Records a game outcome;
3. Verifies a winning ticket;
4. Produces a management report; or
5. Performs other internal audit controls of a Keno operation.

(19) [(46)] "Keno manager" means the person in charge of the
operation of the Keno game.

(20) "Model number" means a number designated by the
manufacturer that indicates the unique structural design of a cus-
tom card-minding device or card-minding system component.

(21) [(47)] "Multitrace ticket" means a single ticket which allows
a player to make the same wager on consecutive games.

(22) [(48)] "Outside ticket" means a computer generated ticket
given to the player which reflects certain game and wagering in-
formation.

(23) [(49)] "Perm number" means the number generally LO-
CATED [printed] in the center space of a bingo card that identifies
the unique pattern of numbers printed on that card OR FACE.

(24) "Player tracking software" means computer software that
may be located on the card-minding device system that is used to
identify or track certain characteristics of bingo players, including
personal data and purchasing habits.

(25) [(50)] "PROM" means programmable ROM.

(26) "Proprietary software" means custom computer software
developed by the manufacturer that is a primary component of
the card-minding device system and is required for a card-minding
device to be used in a game of bingo.

(27) [(51)] "Quick pick" means a number selection made for the
player by a computer.

(28) [(52)] "RAM" or "random access memory" means the
electronic memory that a computer uses to store information.

(29) [(53)] "Random number generator" means a device:
(a) For generating number values that exhibit characteristics of
randomness; and
(b) Composed of:
1. Computer hardware;
2. Computer software; or
3. A combination of computer hardware and software.

(30) [(54)] "Regrade" means to manually recalculate the prize
payout of a winning ticket according to the printed pay schedule.

(31) [(55)] "ROM" or "read only memory" means:
(a) The electronic component used for storage of nonvolatile
information in Keno equipment that provides instructions needed
by the computer to begin its operations each time it is turned on;
(b) "PROM"; and
(c) "EPROM".

(32) [(56)] "Seal card game with a cumulative or carryover
prize" means a type of charity game ticket utilizing a seal card in
which:
(a) The game manufacturer has established a prize pool com-
posed of specifically-dedicated prize amounts originating from the
play of a deal or deals of a particular game; and
(b) These specifically-dedicated prize amounts accumulate or
carry over to a subsequently-played deal or deals of the same
game and are awarded in conjunction with the play of those deals.

(33) "Secondary component" means additional software or
hardware components, provided by the manufacturer, that:
(a) Are part of or are connected to a card-minding device
system that does not affect the conduct of the game of bingo;
and
(b) May include:
1. Computer screen backgrounds;
2. Battery charge-up software routines;
3. Monitors;
4. Keyboards;
5. Pointer devices;
6. Mice;
7. Printers;
8. Printer software drivers; and

(34) [(57)] "Selection device" means a device that:
(a) May be operated:
1. Manually; or
2. Automatically; and
(b) Is used to randomly select bingo numbers.

(35) [(58)] "Secondary component" means additional software or
hardware components, provided by the manufacturer, that are part
of or are connected to a card-minding device system that does not
affect the conduct of the game of bingo. Secondary components
may include computer screen backgrounds, battery charge-up
software routines, monitors, keyboards, pointer devices, mice, printers, printer software drivers, and charging racks.)

(35) (28) "Serial number" means a number assigned by the manufacturer to track [trans] the individual product that is:
(a) [1] For a paper card or face, [it is] [that is]:
                        (i) [1] printed by the manufacturer on each card in a set and is [is];
                        (b) [1] unique to the set; and
                        (b) [1] For a card-minding device, [it is] the unique identification number assigned by a manufacturer to a specific custom card-minding device or other component of a card-minding device system.

(36) (29) "Series number" means the number of unique cards or [card] faces contained in a set.

(37) (30) "Set" means a specific group of paper cards from the same product line that:
(a) Are the same:
                        1. Color; and
                        2. Border pattern;
                        (b) Are imprinted with the same serial number; and
                        (c) May include more than one (1) series of:
                        1. Cards; or
                        2. Faces.

(38) "Site system" means computer hardware, software, and peripheral equipment that:
(a) Is located at the bingo premises;
(b) [1] Is operated by the charitable organization;
(c) Interfaces with controls or defines the operational parameters of card-minding devices; and
(d) [May include [but is not limited to]] the following components:
                        1. Point of sale station;
                        2. [1] A caller verification system;
                        3. [1] Required printers;
                        4. [1] Dial-up modem;
                        5. [1] Proprietary executable software;
                        6. [1] Report generation software; and
                        7. An accounting system or database.

(39) "Standard card-minding device" means a card-minding device that uses proprietary software which is hardware independent other than the specification of minimum system requirements.

(40) "Terminal number" means the unique identification number assigned by a manufacturer to a specific card-minding device.

(41) (31) "Transaction log" means a record of the same information printed on each outside ticket that is:
(a) Retained in the computer’s memory; or
(b) Printed out by the computer.

(42) (32) "Twenty-four (24) hour period" means a twenty-four (24) hour period of time commencing at 12:01 a.m. and ending at twelve (12) midnight.

(43) (33) "Verification system [book]" means a book of bingo cards compiled by the manufacturer or an electronic device created by the manufacturer [to verify perm numbers] of bingo cards that:
(a) Lists the unique patterns of numbers on each card by perm number; and
(b) Is used to verify the authenticity of a winning card.

(44) "Version number" means a unique number designated by the manufacturer to signify a specific version of software used on or by the card-minding device system.

(45) (34) "Way ticket" means a single ticket that permits wagering on a combination of numbers in various ways designated by the player.

(46) (35) "Week" means a seven (7) day period beginning on Sunday and ending Saturday.

(47) (36) "Year" is defined by KRS 238.505(25).

JOHN WINSTEAD, Commissioner
APPROVED BY AGENCY: November 12, 2003
FILED WITH LRC: November 13, 2003 at 3 p.m.
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Charitable Gaming
Division of Licensing and Compliance
(As Amended at ARRS, March 9, 2004)

820 KAR 1:040. Bingo standards.

RELATES TO: KRS 238.545
STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the department to promulgate administrative regulations necessary to carry out the purposes and intent of KRS Chapter 238. KRS 238.515(2) authorizes the department to establish charitable gaming standards. KRS 238.545(1)(b) requires the department to promulgate an administrative regulation concerning use and control of card-minding devices. The Department of Charitable Gaming is authorized to establish reasonable standards for the conduct of charitable gaming and to establish standards for the construction and distribution of bingo materials and equipment and rules of play. KRS 238.505(26) defines the term “card-minding device.” KRS 238.545(1)(b) authorizes licensed charitable organizations to provide card-minding devices for use by bingo players. That section also directs the department to promulgate an administrative regulation concerning the use and control of these devices. This administrative regulation establishes standards for the construction and distribution of bingo materials and equipment for the conduct of play of bingo, including standards relative to card-minding devices.

Section 1. Bingo Material Construction Standards. The following standards shall govern the construction of bingo materials:
(1) The paper used to construct paper bingo cards or faces shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading or bleeding through a packet thereby obscuring other numbers or cards.
(2) Perm numbers shall be displayed on [in the center-square of the card.
(3) Numbers displayed [printed] on the card shall be randomly assigned.
(4) Each set of cards shall be comprised of cards bearing the same serial number. A [No] serial number shall not be repeated by the same manufacturer within one (1) year.
(5) Cards assembled in books or packets shall be glued. Staples shall not be used.
(6) A label shall be placed on, or be visible from, the exterior of each carton of paper bingo cards listing the following information:
(a) Type of product;
(b) Number of booklets or loose sheets;
(c) Series numbers;
(d) Serial number of the top sheet;
(e) Number of cases;
(f) Cut of paper; and
(g) Color of paper.

Section 2. Bingo Equipment Approval. (1) Designators, receptacles, display boards, other selection devices, and other bingo equipment used in the selection and display of game numbers[,] shall be made available for inspection or testing by the department at any time.
(2) Equipment referenced in subsection (1) of this section shall assure randomness and be free of any defects when used in a bingo game.
(3) A card-minding device and associated site system shall [may] not be sold, leased, or otherwise furnished to any person for use in the conduct of bingo until it has first been tested and approved by an independent testing facility, demonstrated to the department by the manufacturer if requested, and approved by the department.
(b) For [in the case-of] a custom card-minding device, a device which is identical to the one (1) intended to be sold, leased, or otherwise furnished to any person for use in the conduct of bingo [shall] [must] be tested and approved.
(c) For [in-the-case-of] a standard card-minding device, a device which contains identical software to the standard card-minding device intended to be sold, leased, or otherwise furnished shall [must] be tested and approved.

(4) The testing facility shall [must] be approved by the department and the device and software shall [must] be submitted at the manufacturer's expense. The testing facility shall [must] ensure that the device and proprietary software conform to the restrictions and conditions set forth in this administrative regulation [these rules].

(5) Any modifications to a custom card-minding device or the software in a standard card-minding device shall [must] be tested and approved by the department prior to use.

(a) The department, in consultation with the independent testing lab, shall determine whether all proprietary software and card-minding devices required to be tested by this administrative regulation [these rules], as well as other components of card-minding device systems, conform to the requirements and restrictions contained in this administrative regulation.

(b) [these rules.] Once the department has received the test results from the independent test lab, the department may request a demonstration of the product within thirty (30) days.

(c) The department shall [will] either approve or disapprove the submission and inform the manufacturer of the results within thirty (30) days of the demonstration.

(7) Manufacturers may conduct routine maintenance activities and replace secondary components of a card-minding device system without prior department approval or additional testing as long as this activity does not affect the operation of any proprietary software or the manner in which a bingo game is played.

(a) If the department detects or discovers any problem with a card-minding device system that affects the security or the integrity of the bingo game or the card-minding device system, the department shall [may] direct the manufacturer, distributor, or charitable organization to cease the sale, lease, or use of the card-minding device system until the problem is corrected.

(b) The department shall [may] require the manufacturer to correct the problem or recall the card-minding device system immediately upon notification by the department to the manufacturer.

(c) If the manufacturer, distributor, or charitable organization detects or discovers any defect, malfunction, or problem with the card-minding device system that affects the security or the integrity of the bingo game or the card-minding device system, the manufacturer, distributor, or charitable organization shall immediately notify the department.

(a) Distributors and charitable organizations shall not add or remove any software programs to an approved card-minding device system without the permission of the manufacturer.

(b) If the department detects or discovers a card-minding device system at a playing location that is using components or software that were required to have been approved by the department but have not been approved, the card-minding device system shall [will] be determined to have an unauthorized modification and the use of the system shall cease immediately.

Section 3. Requirements for Manufacturers of Card-minding Device Systems. (1) Manufacturers of card-minding device systems shall [must] manufacture each site system to ensure that an internal accounting system is capable of recording and retaining for a period of not less than twelve (12) months:

(a) The serial number of each bingo card sold for card-minding device use;

(b) The price of each card or card package sold;

(c) The total amount of the card-minding device sales for each session;

(d) The total number of card faces sold for use with card-minding devices for each session;

(e) The serial number of each custom card-minding device sold;

(f) The terminal number or account number associated with each standard card-minding device sold.

(4) The information referenced in subsection (3) of this section shall [must] be secure and shall not be accessible for alteration during the session.

(a) The site system shall [must] also have report generation software with the capability to print all information required to be maintained on the site system's active or archived databases.

(5) Manufacturers of card-minding device systems shall [must] manufacture each site system to ensure that the applicable point of sale station is capable of printing a receipt for each sale or void of a card-minding device that includes, at a minimum, the following information:

(a) The date and time of the transaction;

(b) The dollar value of the transaction and quantity of associated products;

(c) The sequential transaction number;

(d) The session in which the product was sold;

(e) Each card face number or range of serial numbers;

(f) The serial number of each custom card-minding device sold;

and

(g) The terminal number or account number for each standard card-minding device sold.

(6) Card-minding device systems may include player tracking software. Player tracking records shall state all times be the property of the charitable organization and neither the manufacturer nor the distributor shall utilize or make available to any person, other than the department or as otherwise authorized by law, the information contained within the player tracking software without the express permission of the charitable organization.

(7) Manufacturers of card-minding device systems shall [must] provide a method that enables the verification of winning cards and the ability to create a physical representation for posting or record-keeping purposes.

(a) Manufacturers of card-minding device systems shall employ sufficient security safeguards in designing and manufacturing the card-minding device system so that it can be verified that all proprietary software components are authentic copies of the approved software components and all functioning components of the card-minding device system are operating with identical copies of approved software programs.

(b) The system shall [must] also have sufficient security safeguards so that any restrictions or requirements authorized by the department or any approved proprietary software are protected from alteration by unauthorized personnel.

(c) Examples of security measures that may be employed to comply with these provisions include [are] the use of dongles, digital signature comparison hardware and software, secure bootloaders, encryption, and key and callback password systems.

(9) Manufacturers of card-minding device systems shall ensure that a card-minding device does not allow any bingo card faces other than those verifiably purchased by the patron to be available for play.

(10) A [No] manufacture shall not [may] display, use or otherwise furnish a card-minding device which has in any manner been marked, defaced, tampered with, or which is otherwise intended to deceive the public or affect a person's chances of winning.
Section 4. Distributor Requirements for Card-minding Device Systems. (1) Before initial use by a charitable organization, each distributor that leases, sells, or otherwise furnishes a card-minding device system shall submit to the department Form DIS-INS, "Distributor's Report of Installation". The form shall contain [must notify the department in writing on a form prescribed by the department] the following:

(a) The playing location name, physical address, telephone number, and facility license number, if applicable, where the card-minding device system is located;

(b) The model number and total number of card-minding devices installed at the playing location;

(c) The date the card-minding device system was installed;

(d) The model, version and serial number or terminal numbers of the card-minding devices and site system equipment;

(e) The name and license number of the charitable organization to whom the card-minding device system was sold, leased, or otherwise furnished; and

(f) The name and license number of the manufacturer or distributor from whom the card-minding device system was leased, purchased or otherwise obtained.

(2)(a) Before initial use by a charitable organization, each distributor that leases, sells, or otherwise furnishes a card-minding device system that will be used at multiple locations, shall submit to the department Form DIS-MLU, "Distributor's Report of Multiple Location Use", [must notify the department in writing on a form prescribed by the department] the following:

(a) The name and license number of the charitable organization to whom the card-minding device system was sold, leased, or otherwise furnished;

(b) The account number or terminal number of each standard card-minding device;

(c) The model and version number of each custom card-minding device;

(d) The date of the transaction with the distributor; and

(e) The name and license number of all components of the site system software; and

(3) A manufacturer furnishing a card-minding device system shall [must] provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

1. (a) The date of sale and the time period covered by the invoice;

2. (b) The quantity sold or leased;

3. (c) The total invoice amount; and

(b) The manufacturer shall maintain physical or electronic copies of the invoice or documentation for a period of thirty-six (36) months.

(d) A manufacturer furnishing a card-minding device system shall maintain records showing:

1. The brand or model name, serial number and any other identifying characteristics of the card-minding device systems furnished;

2. The identity of any licensed distributors to whom the card-minding device systems were furnished; and

3. The date they were furnished.

(b) Each manufacturer shall provide to the department on a quarterly basis copies of distribution agreements with distributors concerning approved card-minding device systems.

(c) Each manufacturer shall record the name, address and social security number of any employee, agent or private contractor who functions as a manufacturer representative at any bingo session where the manufacturer's card-minding device systems are furnished.

Section 5. Requirements for Charitable Organizations Using Card-minding Device Systems. (1) Before initial use of a card-minding device system by a charitable organization, the organization shall ascertain that the particular device is approved by the department for use in the Commonwealth.

(2) A (No) licensed charitable organization shall not require a player to use a card-minding device in playing bingo.

(3) A licensed charitable organization shall not display, use, or otherwise furnish a card-minding device which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

(4) If a player's card-minding device becomes inoperable during a bingo game, it shall not [cannot be replaced while the game is in progress. It may [can] be repaired if the repair will not interrupt the game.]

(5) Each card-minding device shall be [as] limited to offering for play a maximum of seventy-two (72) card faces during any one (1) game of a session.

(6) The charitable organization shall take reasonable safeguards to ensure that the card-minding device system does not allow a card-minding device to be used to obtain a bingo prize for any bingo game other than for a game within the bingo session for which the card-minding device was sold.

(7) The department may examine and inspect any card-minding device and site system. [Including:] Such examination and inspection includes immediate access to the card-minding device and unlimited inspection of all parts of the site system.

Section 6. Tracking by Manufacturer. (1) Every manufacturer of bingo materials shall maintain records sufficient to track the bingo materials from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

(2) Each manufacturer selling, leasing, or otherwise furnishing card-minding device systems shall [must] maintain a single log or other record showing the following:

(a) The date of the transaction with the distributor;

(b) The model, version and serial number of each custom card-minding device;

(c) The account number or terminal number of each standard card-minding device;

(d) The model and version number of each custom card-minding device;

(e) The name and license number of all components of the site system software; and

(f) The name and license number of all components of the site system software.

(3) A manufacturer furnishering a card-minding device system shall [must] provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

1. (a) The date of sale and the time period covered by the invoice;

2. (b) The quantity sold or leased;

3. (c) The total invoice amount; and

(b) The manufacturer shall maintain physical or electronic copies of the invoice or documentation for a period of thirty-six (36) months.

(d) A manufacturer furnishing a card-minding device system shall maintain records showing:

1. The brand or model name, serial number and any other identifying characteristics of the card-minding device systems furnished;

2. The identity of any licensed distributors to whom the card-minding device systems were furnished; and

3. The date they were furnished.

(b) Each manufacturer shall provide to the department on a quarterly basis copies of distribution agreements with distributors concerning approved card-minding device systems.

(c) Each manufacturer shall record the name, address and social security number of any employee, agent or private contractor who functions as a manufacturer representative at any bingo session where the manufacturer's card-minding device systems are furnished.

Section 7. Tracking by Distributor. (1) Every distributor of bingo materials shall maintain records sufficient to track the bingo materials from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.

(2) Each distributor selling, leasing, or otherwise furnishing card-minding device systems shall [must] maintain a single log or other record showing the following information:

(a) The playing location name, physical address, telephone number, and facility license number, if applicable, where the card-minding device system is located;

(b) The model, version and serial number of card-minding devices at each playing location;

(c) The date the card-minding device system was installed or removed;

(d) The model, version and serial number or terminal numbers
of the card-minding devices and site system equipment,
   (e) The name and license number of the charitable organization or distributor to whom the card-minding device was sold, leased or otherwise furnished; and
   (f) The name and license number of the manufacturer or distributor from whom the card-minding device was purchased, leased or otherwise obtained.

(3) (a) Distributors selling, leasing, or otherwise providing card-minding device systems to charitable organizations or distributors shall [must] provide the charitable organization or distributor with an invoice or other documentation that contains, at a minimum, the following information:

   1. [must] maintain copies of the invoice or documentation for a period of thirty-six (36) months;
   2. [(b)] The quantity sold or leased; and
   3. [(c)] The total invoice amount.

(b) The distributor shall maintain physical or electronic copies of the invoice or documentation for a period of thirty-six (36) months.

(c) Each licensed distributor furnishing card-minding device systems shall maintain the following records for thirty-six (36) months:

   (a) The brand or model name, serial number and any other identifying characteristics of the card-minding devices furnished and the date they were furnished;
   (b) The name, address and license number of the charitable organization or distributor to which card-minding devices were furnished, including the specific brand or model name and serial number of devices furnished to the particular organization;
   (c) The name, address and license number of any manufacturer from which card-minding devices were obtained, including the specific brand or model name and serial number of devices obtained;
   (d) The name, address and license number of any distributor to which card-minding devices were furnished or from which card-minding devices were obtained, including the specific brand or model name and serial number of devices obtained;
   (e) The total dollar amount of card-minding device sales or lease transactions regarding each charitable organization to which card-minding devices were furnished during each calendar quarter;
   (f) The name, address and social security number of any distributor agent, employee or private contractor who functions as a distributor's representative at any bingo session where card-minding devices are furnished by the distributor to a charitable organization;

   and
   (g) Contracts, leases or purchase agreements between distributors of card-minding devices and the charitable organizations to which the devices are furnished.

[Section 3 - Tracking-by-Manufacturer. Every manufacturer of bingo materials shall maintain records sufficient to track the bingo materials from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.]

Section 4 - Tracking-by-Distributor. Every distributor of bingo materials shall maintain records sufficient to track the bingo materials from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by department staff.]

Section B, [6] Rules of Play. The following rules of play shall govern the conduct of bingo games:

   (1) All individuals involved in any way in the conduct of bingo shall be trained in the proper conduct of the game and the control of funds.
   (2) Except for Braille cards intended for use by blind players, bingo cards or card minding devices shall not be reserved by the charitable organization for any player. Legally blind players may use their own cards if the licensee does not make Braille cards available.
   (3) Disposable paper bingo cards that have the same series number shall not be sold for use in the same game.

   (4) A distributor or manufacturer may have a representative present at any bingo session at which their card-minding devices are furnished to a charitable organization and this representative, if present, shall be considered an agent, employee or contractor of the distributor or manufacturer, as circumstances warrant.

   (5) Before selecting or calling the first number in a game, the bingo caller shall call out the amount of the game prize to be awarded.

   (6) [65] Before selecting and calling the first number in a game, the bingo caller shall announce the pattern or arrangement of squares to be covered to win the game. This information shall also be posted in a conspicuous place or listed in an occasion program.

   (7) [66] All selection equipment shall be free of defects.

   (8) [77] After selecting each number, the bingo caller shall:

   (a) Clearly announce the number;
   (b) Display the ball or other device used as a designator in a manner allowing the players to see the number;
   (c) Cause the designator to be placed in a receptacle so as to prevent it from being placed back in the selection pool; and
   (d) Enter each letter and number called on a flash board or similar device for player viewing.

   (9) [88] A player or charitable organization shall not separate cards on one (1) sheet or from a packet.

   (10) [99] All players shall be physically present at the location where the bingo game is held to play the game or to claim a prize offered.

   (11) [140] A winner shall be determined when the preannounced pattern of squares is covered by a player on a card.

   (12) [141] It shall be the player's responsibility to notify the game operator or caller that the player has a winning bingo combination as announced. When a player declares a winning card, the following steps shall be followed for winner verification:

   (a) The game shall be stopped before the next number is called. If the next number has already been called, it shall be secured to ensure that if the declared "bingo" is invalid, the game may continue.

   (b) A volunteer for the charitable organization shall show [take] the winning card to [from-the-player, holding-it-in-front-of] a neutral player, and call back the perm number if an electronic verifier or verifier book is used while in front of the neutral player. If any other system is used, a volunteer for the charitable organization shall show [take] the winning card to [from-the-player, holding-it-in-front-of] a neutral player, and call back the winning combination while in front of the neutral player.

   (13) If the department or any player requests verification of a winning card face played on a card-minding device, the session chairperson shall print the winning card face and post it in a conspicuous location where it may be viewed in detail. Winning card faces requested for posting shall remain posted for at least thirty (30) minutes after the completion of the last bingo game at the particular session.

   (14) [142] If more than one (1) winner is declared in a bingo game, the following method of awarding prizes shall apply:

   (a) Cash prizes shall be divided equally among the verified winners; and
   (b) If the prize is something other than cash and cannot be divided among winners, prizes of equal proportionate value shall be awarded.

   (15) [143] Any individual involved in any capacity in the conduct of charitable gaming at which bingo cards are sold shall not purchase or play bingo cards, unless the individual's duties are completed for that bingo session [the evening].

   (16) [144] A charitable organization that has "house rules" concerning its bingo session shall post those rules in at least two (2) conspicuous locations within the gaming facility and announce them prior to the commencement of the bingo session.

   (17) [145] Every ball in the bingo machine or other device used as a designator shall be placed out for verification at the commencement and at the completion of each bingo session.

Section 9, [6] Winner Verification and Registration. (1) Manufacturers of bingo cards shall make available for purchase a verification book or other verification system for all cards manufactured.
(2) The charitable organization conducting a bingo game shall use a reliable verification system that corresponds with the set of cards in play.

Section 10. [7] Prizes. (1) The values of bingo cards or free packets or charity game ticketed awarded players, whether awarded as door or bingo prizes, as birthday prizes, or for any other reason, shall be included in the prize limit of $5,000 per twenty-four (24) hour period prescribed in KRS 238.545(1).

(2) Each bingo winner shall be determined and every prize shall be awarded and delivered on the same day on which the bingo was conducted.

(3) Carryover, cumulative or progressive games or prizes connected to a bingo game or conditioned on winning a bingo game shall be permitted only if prizes awarded on carryover, cumulative or progressive games are included in the prize limit of $5,000 per twenty-four (24) hour period prescribed in KRS 238.545(1) regardless of the method by which a player is eligible to participate.

(4) The licensed charitable organization shall be responsible for ensuring that the value of any carryover, cumulative or progressive game prize, when added to the values of the other prizes of the same date or occasion, does not exceed the $5,000 limit.

(5) All receipts on carryover, cumulative or progressive games shall be reported to the department as gross receipts for the date collected pursuant to KRS 238.550.

(6) Any method by which players pay money to be eligible for a drawing, that is not connected to a bingo game or conditioned on winning a bingo game, shall be considered a raffle.

(7) Each licensed charitable organization awarding a door prize of a value exceeding thirty (30) dollars shall maintain accurate records of the following:
- The name and address of the individual to whom the door prize was awarded;
- The date on which the door prize was awarded;
- A description of the door prize;
- The fair market value of the door prize; and
- An acknowledgment by the individual to whom the door prize was awarded verifying the information in this subsection and verifying receipt of the door prize.

(8) All door prizes shall be initiated and awarded on the same date and shall be included in the prize limit of $5,000 per twenty-four (24) hour period as prescribed in KRS 238.545(1).

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form DIS-INS, "Distributor's Report of Installation" (3-04);
(b) Form DIS-AR, "Distributor's Report of Addition or Removal" (3-04);
(c) Form DIS-MLU, "Distributor's Report of Multiple Location Use" (3-04); and
(d) Form DIS-MLU-AR, "Distributor's Report of Multiple Location Use Addition or Removal" (3-04).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN WINESTAD, Commissioner
APPROVED BY AGENCY: November 12, 2003
FILED WITH LRC: November 13, 2003 at 3 p.m.
CONTACT PERSON: Christopher A. Stallings, Staff Attorney, Office of General Counsel, Department of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5525 or (800) 729-5672, fax (502) 573-6625.
hospital that:
(a) Has an inpatient Medicaid utilization rate of one (1) percent or higher; and
(b) Meets the criteria established in 42 U.S.C. 1396r-4(d).
(17) "Distinct part unit" means a separate unit within an acute care hospital that meets the qualifications established in 42 C.F.R. 412.23(e)(10) [46]."DRG" means Data Resources, Incorporated.
(19) "Federal Register" means the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.
(20) "Fixed cost threshold" means the amount combined with the full DRG payment for each DRG to determine the outlier threshold.
(21) [414] "Government entity" means an entity that qualifies as a unit of government for the purposes of 42 U.S.C. 1396b(w)(6)(A).
(22) [419] "Indexing factor" means the percentage that the cost of providing a service is expected to increase during the universal rate year.
(23) [430] "Indigent care" means the unreimbursed cost to a hospital of providing a service on an inpatient or outpatient basis:
(a) To an individual who is:
1. Determined to be indigent in accordance with KRS 205.640; and
2. Not a Medicaid recipient; and
(b) For which an individual shall not be billed by the hospital.
(24) [444] "Indigent care eligibility criteria" means the criteria as specified in Section 25.19 of this administrative regulation used by a hospital to determine if an individual is eligible for indigent care.
(25) [455] "Inflation factor" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.
(26) "Intrainstitutional transfer" means a transfer within the same acute care hospital resulting in a discharge from and a new admission to a licensed and certified acute care bed, psychiatric distinct part unit, or rehabilitation distinct part unit.
(27) "Level II neonatal center" means a facility that provides specialty care for infants which includes monitoring for apnea spells, incubator or other assistance to maintain the infant's body temperature, and feeding assistance.
(28) "Level III neonatal center" means a facility which provides specialty care of infants which includes ventilator or other respiratory assistance for infants who cannot breathe adequately on their own, special intravenous catheter to monitor and assist blood pressure and heart function, observation and monitoring of conditions that are unstable or may change suddenly, and postoperative care.
(29) "Long-term acute care hospital" or "LTAC" means a hospital that meets the requirements established in 42 C.F.R. 412.23(e).
(30) [416] "Medicaid shortfall" means the difference between a provider's cost of providing services to Medicaid recipients and the amount received in accordance with the payment provisions in Sections 3, 11, and 23 [4, 5, and 45] of this administrative regulation.
(31) "Medical education costs" means are direct costs that are:
(a) Associated with an approved intern and resident program; and
(b) [Are] Subject to limits established by Medicare.
(32) [47] "Medically necessary" or "medical necessity" means that a covered benefit shall be provided in accordance with 907 KAR 3:130.
(33) [48] "Operating costs" means allowable routine, ancillary service and special care unit costs related to inpatient hospital services.
(34) "Outlier threshold" means the sum of the operating payment amount, capital-related payment amount, and the fixed loss cost threshold.
(35) [49] "Pediatric teaching hospital" is defined in KRS 205.565(1).
(36) "Per diem rate" means the per diem rate effective April 1, 2003, for rehabilitation hospitals, long-term acute care hospitals, critical access hospitals, psychiatric hospitals, and psychiatric services provided in an acute care hospital.
(37) "Price level increase" means the percentage that the cost of providing a service has increased, or is expected to increase, for a specific period of time.
(38) [20] "Professional component cost" means a physician compensation cost paid by the provider for a psychiatric service to a patient in a psychiatric hospital and includes the following categories of practice:
(a) Anesthesiology;
(b) Cardiology;
(c) Electroencephalography;
(d) Pathology;
(e) Radiology; and
(f) Psychiatry in a psychiatric hospital only.
(39) [414] "Psychiatric access hospital" means an acute care hospital which:
(a) Is not located in a Metropolitan Statistical Area as determined by the U.S. Census Bureau;
(b) Provides at least 65,000 days of inpatient care in a fiscal year;
(c) Provides at least twenty (20) percent of inpatient care to Medicare eligible recipients; and
(d) Provides at least 5,000 days of inpatient psychiatric care to Medicare recipients in a fiscal year.
(40) [22] "Psychiatric hospital" means a hospital which meets the licensure requirements as established in 902 KAR 20:180.
(41) "Quality improvement: organization" or "QIO" means an organization that complies with 42 C.F.R. 475.101.
(42) "Rebase" means to redefine base rates, per diem rates, and other applicable components of the payment rates using more recent data.
(43) [23] "Rate on rate" means the methodology of establishing a reimbursement rate by multiplying an existing rate by a percentage of increase as specified in Section 3 of this administrative regulation.
(44) "Rehabilitation hospital" means a hospital meeting the licensure requirements as established in 902 KAR 20:240.
(45) [26] "Resident" means an individual living in Kentucky who is not receiving public assistance in another state.
(46) [26] "State university teaching hospital" means:
(a) A hospital that is owned or operated by a Kentucky state-supported university with a medical school; or
(b) A hospital:
1. In which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; and
2. That does not possess only a residency program or rotation agreement.
(47) [27] "Third-party payor" means a payor of a third party pursuant to KRS 205.510(16).
(48) [28] "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.
(49) [30] "Type I hospital" is defined as a hospital with 100 beds or less that participates in the Medicare Program.
(50) [30] "Type I hospital" means an in-state disproportionate share hospital with 101 beds or more that participates in the Medicare Program, except for a hospital that meets the criteria established in this administrative regulation for a Type III or Type IV hospital.
(51) [24] "Type III hospital" means an in-state disproportionate share state university teaching hospital, owned or operated by either the University of Kentucky or the University of Louisville Medical School.
(52) [32] "Type IV hospital" means an in-state disproportionately share hospital participating in the Medicaid Program that is a state-owned psychiatric hospital.

(53) [33] "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July of each year, for which a payment rate is established for a hospital regardless of the hospital's fiscal year end.

(54) [34] "Upper payment limit" means the maximum amount the Medicaid Program shall pay for an inpatient day of care with the maximum varying based on the following:
(a) Utilization;
(b) Peer grouping; and
(c) Age of patient.

(55) [35] "Urban trauma center hospital" means an acute care hospital that:
(a) Is designated as a Level I Trauma Center by the American College of Surgeons;
(b) Has a Medicaid utilization rate greater than twenty-five (25) percent; and
(c) At least fifty (50) percent of its Medicaid population are residents of the county in which the hospital is located.

(56) [36] "Weighted median" means the cost per diem associated with the median point of cumulative inpatient days calculated by arraying cost per diems within a specified peer group from lowest to highest.

Section 2. Reimbursement for an Inpatient Hospital Service.

[14] The department shall reimburse for an inpatient hospital service provided to an eligible Medicaid recipient through the use of a rate that meets the requirements of 42 U.S.C. 1396a(a)(13).

[2] Excluding critical access hospitals, reimbursement for an inpatient hospital service shall be prospective.

Section 3. Payment for an Inpatient Acute Care Service in an Acute Care Hospital. (1) An acute care hospital shall be paid for an inpatient acute care service on a fully-prospective per discharge basis for the universal rate year beginning on or after April 1, 2003.

(2) For an inpatient acute care service in an acute care hospital, the total per discharge payment shall be the sum of:
(a) An operating payment amount;
(b) A capital-related payment amount; and
(c) If applicable, a cost outlier payment amount.

(3) An operating payment amount shall be based on a patient's DRG classification, as assigned by the Medicare DRG classification system, subject to the modification described in subsection (6) of this section. The operating payment amount shall be calculated for each discharge by multiplying a hospital's operating base rate by the Medicaid-specific DRG relative weight.

(4) The operating base rate for each hospital shall be the Medicare national standardized amount as adjusted by Medicare for each hospital using the Medicare wage index and Medicare indirect medical education operating adjustment factor.

(a) The Medicare DSH operating adjustment factor shall be excluded from the calculation of the operating base rate for each hospital.

(b) The adjusted Medicare national standardized amount shall be calculated based on the Medicare rate data published in the Federal Register for Medicare payments effective on October 1 of the year immediately preceding the universal rate year.

(c) Data not specifically available in the Federal Register shall be obtained from each hospital's Medicare fiscal intermediary.

(d) A capital-related payment amount shall be based on a patient's DRG classification, as assigned by the Medicare DRG classification system, subject to the modification described in subsection (6) of this section. The capital payment amount shall be calculated for each discharge by multiplying a hospital's capital-related base rate by the Medicaid-specific DRG relative weight.

(e) The capital-related base rate for each hospital shall be the Medicare federal capital rate, as adjusted by Medicare for each hospital using the Medicare large urban-area adjustment factor if applicable, the Medicare geographic adjustment factor, and the Medicare indirect medical education capital adjustment factor published in the Federal Register.

(a) The Medicare DSH capital adjustment factor shall be excluded from the calculation of the capital-related base rate for each hospital.

(b) For each universal rate year beginning July 1, 2004, the adjusted Medicare federal capital rate shall be calculated based on the Medicare rate data published in the Federal Register for Medicare payments effective on October 1 of the year immediately preceding the universal rate year.

(c) Data not specifically available in the Federal Register shall be obtained from each hospital's Medicare fiscal intermediary.

(7) An additional cost outlier payment shall be made for an approved discharge meeting the Medicaid criteria for a cost outlier for each Medicare DRG. A cost outlier shall be subject to QIO review and approval.

(a) A discharge shall qualify for an additional cost outlier payment if its estimated cost exceeds the DRG's outlier threshold.

(b) The estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, shall be calculated by multiplying the sum of the hospital-specific Medicare operating and capital-related cost-to-charge ratios by the discharge-allowed charges.

(c) The Medicare operating and capital-related cost-to-charge ratios shall be those used by Medicare published in the Federal Register for outlier payment calculations as of October 1 of the year immediately preceding the start of the universal rate year.

(d) An outlier threshold shall be calculated as the sum of the discharge's operating payment amount, capital-related payment amount and the fixed loss cost threshold.

(e) Payment for a cost outlier shall be eighty (80) percent of the amount that estimated costs exceed the discharge's outlier threshold.

(8) Kentucky Medicaid-specific DRG relative weights shall be calculated using all applicable Medicaid discharges from the hospital's base year claims data and determined as follows:

(a) Medicaid claims from the base year claims data shall be assigned Medicare DRG classifications using the Medicare DRG classification system.

(b) Claims data for discharges that are reimbursed on a per diem basis shall be removed, including:
1. Psychiatric claims from all hospitals, identified as those claims from acute care hospitals with psychiatric diagnoses;
2. All claims from psychiatric hospitals;
3. All claims from rehabilitation hospitals;
4. All claims from critical access hospitals; and
5. All claims from long-term acute care hospitals.

(c) Claims for transplant services as specified in subsection (13) of this section shall be removed.

(d) Claims for patients discharged from out-of-state hospitals shall be removed.

(e) Allowed days for the remaining discharges shall be identified.

(f) A unique set of DRGs and relative weights shall be established for a facility identified by the department as qualifying as a Level III neonatal center.

1. A claim classified into DRGs 385 through 390 for a qualifying hospital where care is provided in a neonatal intensive care unit shall be identified and reassigned to DRGs 885 through 890, respectively.

2. Only a qualifying hospital shall be eligible for payment using DRGs 885 through 660.

(g) A statewide Medicaid arithmetic mean length-of-stay per discharge shall be determined for each DRG classification.

(h) Relative weights shall be calculated for each DRG by multiplying the Medicare relative weight by the ratio of the Medicaid arithmetic mean length-of-stay to the Medicare arithmetic mean length-of-stay, multiplied by the budget neutrality factor.

(i) For purposes of calculating the DRG relative weights in paragraph (h) of this subsection, Medicare DRG relative weights and arithmetic mean length-of-stay shall be those published in the Federal Register effective on October 1 of the year immediately preceding the universal rate year.

(j) An indirect medical education adjustment factor shall be the same indirect medical education factor used by Medicare for Medicare rates effective on October 1 of the year immediately preceding the universal rate year.
(a) An indirect medical education operating adjustment factor shall be the same used by Medicare, based on the published Medicare formula. The ratio of intern and residents to available beds used in the Medicare formula shall be obtained from each hospital's Medicare fiscal intermediary.

(b) An indirect medical education capital adjustment factor shall be the same used by Medicare, based on the published Medicare formula. The ratio of intern and residents to average daily census used in the Medicare formula shall be obtained from each hospital's Medicare fiscal intermediary.

(10) If a patient is transferred to or from another hospital, the department shall make a transfer payment to the transferring hospital if the initial admission and the transfer are determined to be medically necessary.

(a) For a service reimbursed on a prospective discharge basis, the transfer payment amount shall be calculated based on the average daily rate of the transferring hospital's payment for each covered day the patient remains in that hospital, plus one (1) day, up to one hundred percent of the allowable per discharge reimbursement amount.

(b) An average daily rate shall be calculated by dividing the allowable per discharge reimbursement amount, based on a patient's DRG classification, by the statewide Medicaid average length-of-stay for a patient's DRG classification.

2. An allowable per discharge reimbursement amount, based on a patient's DRG classification, shall be the sum of the operating payment amount and the capital-related payment amount.

3. Total reimbursement to the transferring hospital shall be the transfer payment amount and, if applicable, a cost outlier payment amount.

(b) For a hospital receiving a transferred patient, reimbursement shall be the allowable per discharge reimbursement amount, based on the patient's DRG classification, and, if applicable, a cost outlier payment amount.

(11) A transfer from an acute care hospital to a qualifying postacute care facility for selected DRGs in accordance with paragraph (b) of this subsection will be treated as a postacute care transfer.

(a) The following shall qualify as a postacute care setting:
1. A psychiatric, rehabilitation, children's, long-term, or cancer hospital;
2. A skilled nursing facility or
3. A home health agency.

(b) The following DRGs shall be eligible for the postacute care transfer payment:

1. DRG 14, Specific cerebrovascular disorders except transient ischemic attack;
2. DRG 113, Amputation for circulatory system disorders except upper limb and toe;
3. DRG 208, Major Joint Limb Reattachment procedures of lower extremity;
4. DRG 210, Hip and femur procedures except major joint procedures age > seventeen (17) with CC;
5. DRG 211, Hip and femur procedures except major joint procedures age > seventeen (17) without CC;
6. DRG 238, Fretures of hip and pelvis;
7. DRG 263, Skin graft and debridement for skin ulcer or cellulitis with CC;
8. DRG 264, Skin graft and debridement for skin ulcer or cellulitis without CC;
9. DRG 429, Organic disturbances and mental retardation; and
10. DRG 483, Tracheostomy except for face, mouth and neck diagnoses.

(c) Each transferring hospital shall be paid a per diem rate for each day of stay.
1. A 40% payment shall exceed the full DRG payment not that would have been made if the patient had been discharged without being transferred.
2. DRGs 208, 210, and 211 shall receive fifty (50) percent of the full DRG payment plus the per diem for the first day of the stay and fifty (50) percent of the per diem for the remaining days of the stay, up to the full DRG payment.
3. The remaining DRGs as referenced in paragraph (a) of this subsection shall receive twice the per diem rate the first day and the per diem rate for each following day of the stay prior to the transfer.

(d) The per diem amount shall be the full DRG payment allowed divided by the statewide Medicaid average length of stay for that DRG.

(12) Effective February 1, 2004, an intrahospital transfer to or from an acute care bed to or from a rehabilitation or psychiatric distinct part unit shall be reimbursed:

(a) The full DRG payment allowed; and

(b) The facility-specific distinct part unit per diem rate for each day the patient remains in the distinct part unit.

(13) A kidney, cornea, pancreas, or kidney and pancreas transplant shall be reimbursed on a prospective per discharge method according to the patient's DRG classification. All other transplants shall be reimbursed in accordance with 907 KAR 1:350.

(14) Payment for a federally-defined hospital swing bed shall be made in accordance with 967 KAR 1:065.

Section 4. Preadmission Services for an Inpatient Acute Care Service. A preadmission service provided within three (3) calendar days immediately preceding an inpatient admission reimbursable under the prospective per discharge reimbursement methodology shall:

1. Be included with the related inpatient billing and shall not be billed separately as an outpatient service;
2. Include a service furnished by a home health agency, a skilled nursing facility or [an] hospice, unless it is a diagnostic service related to an inpatient admission or [an] outpatient maintenance dialysis service.

Section 5. Payment for Direct Graduate Medical Education Costs at Hospitals with Medicare-approved Graduate Medical Education Programs. (1) The department shall reimburse for the direct costs of a graduate medical education program approved by Medicare.

(2) A payment shall be made separately from the per discharge and per diem payment methodologies and shall be made on an annual basis.

(3) An annual payment amount shall be determined for each hospital as follows:

(a) The hospital-specific and national average Medicare per intern and resident amount effective for Medicare payments on October 1 immediately preceding the universal rate year are obtained from each approved hospital's Medicare fiscal intermediary.

(b) The higher of the average of the Medicare hospital-specific per intern and resident amount or the Medicare national average amount shall be selected.

(c) The selected per intern and resident amount shall be multiplied by the hospital's number of interns and residents used in the calculation of the indirect medical education operating adjustment factor. The resulting amount is an estimate of total approved direct graduate medical education costs.

(d) The estimated total approved direct graduate medical education costs shall be divided by the number of total inpatient days as reported in the hospital's most recently finalized Medicaid cost report on Worksheet D, Part 2, to determine an average approved graduate medical education cost per day amount.

(e) The average graduate medical education cost per day amount shall be multiplied by the number of total covered days for the hospital reported in the base year claims data to determine the total graduate medical education costs related to the Medicaid Program.

(f) Medicaid Program graduate medical education costs shall then be multiplied by the budget neutrality factor.

Section 6. Payment for Rehabilitation Services in an Acute Care Hospital. (1) Effective January 1, 2004, a rehabilitation service in an acute care hospital that has a Medicare-designated rehabilitation distinct part unit shall be reimbursed on a per diem basis.

(2) A rehabilitation per diem rate shall be a facility-specific rate based on the most recently received cost report and in accordance with Section 14 of this administrative regulation.
(3) A rehabilitation service provided in a hospital that does not have a Medicare-designated distinct part unit shall be reimbursed the median of rehabilitation services provided in all acute care hospitals.

Section 7. Payment for an Inpatient Psychiatric Service in an Acute Care Hospital. (1) Effective February 1, 2004, an inpatient psychiatric service provided in an acute care hospital that has a Medicare-designated psychiatric distinct part unit shall be reimbursed on a per diem basis.

(2) Reimbursement for an inpatient psychiatric service shall be determined by multiplying a hospital's psychiatric per diem rate by the number of inpatient days.

(3) A psychiatric per diem rate shall be the sum of a psychiatric operating per diem rate and a psychiatric capital per diem rate.

(a) The psychiatric operating cost-per-day amounts used to determine the psychiatric operating per diem rate shall be calculated for each hospital by dividing its Medicaid psychiatric cost basis, excluding capital costs and medical education costs, by the number of Medicaid psychiatric patient days in the base year.

(b) The Medicaid psychiatric cost basis and patient days shall be based on Medicaid claims for patients with a psychiatric diagnosis with dates of service in the base year. The psychiatric operating per diem rate shall be adjusted for:

1. The price level increase from the midpoint of the base year to the midpoint of the universal rate year using the CMS Input Price Index.

2. The change in the Medicare published wage index from the base year to the universal rate year.

3. A psychiatric capital per diem rate shall be facility-specific and shall be calculated for each hospital by dividing its Medicaid psychiatric capital cost basis by the number of Medicaid psychiatric patient days in the base year. The Medicaid psychiatric capital cost basis and patient days shall be based on Medicaid claims for patients with a psychiatric diagnosis with dates of service in the base year. The psychiatric capital per diem rate shall be adjusted as described in Section 10 of this administrative regulation.

(5) For psychiatric services in an acute care hospital that does not have a Medicare-designated distinct part unit, the psychiatric per diem rate shall be the median rate for all psychiatric services in an acute care hospital.

(6) Payment for an inpatient service provided to a child under age six (6) years shall be in accordance with Section 11(6) [69] of this administrative regulation.

Section 8. Hospital's Wage Index and Wage Area. (1) A hospital's wage index, used to adjust per diem reimbursement rates established pursuant to Section 7 of this administrative regulation, shall be the wage index published by CMS in the Federal Register on October 1 immediately preceding the universal base rate year.

(2) For the purpose of applying a wage index, the department shall assign a hospital to:

(a) The wage area in which it is physically located as originally classified by CMS for the Medicare Program for the base year; or

(b) The wage area to which a hospital has been reclassified by the Medicare Geographic Classification Review Board for the base year.

(3) The department shall not consider reclassification of a hospital to a new wage area except during a base period.

Section 9. Budget Neutrality Factors. (1) When rates are rebased, estimated projected reimbursement in the universal rate year for hospitals as described in Sections 3 and 11 of this administrative regulation shall not exceed payments for the same services in the prior year adjusted for inflation using the CMS Input Price Index, and adjusted for changes in patient utilization.

(2) The estimated total payments for each facility under the reimbursement methodology in effect in the year prior to the universal rate year shall be estimated for base year claims. Amounts shall be adjusted for changes in inflation using the CMS Input Price Index and patient utilization.

(3) The estimated total payments for each facility under the reimbursement methodology in effect in the universal rate year shall be estimated for base year claims.

(4) If the sum of all the acute care hospitals' estimated payments under the methodology used in the universal rate year exceeds the sum of all the acute care hospitals' adjusted estimated payments under the prior year's reimbursement methodology, the following universal rate year reimbursement components shall be adjusted and shall result in estimated payments that are budget neutral:

(a) DRG relative weights; and

(b) Periodic direct graduate medical education payment amounts.

Section 10. Reimbursement Updating Procedures. (1) The department shall rebase per diem base rates, per diem rates, DRG relative weights, and the following applicable components of the payment rates no less frequently than every three (3) years using the most recent audited cost report and Medicare rate data available to the department:

(a) Operating rates;

(b) Capital-related rates;

(c) Medical education costs;

(d) Outlier thresholds.

(2) Beginning July 1, 2004, the department shall adjust rates annually on July 1 using the Medicare DRG base rate in effect October 1 of the preceding year as published in the Federal Register and confirmed with each hospital's fiscal intermediary.

(3) The department shall adjust per diem rates annually according to the following:

(a) An operating per diem rate shall be inflated from the midpoint of the previous universal rate year to the midpoint of the current universal rate year using the CMS Input Price Index;

(b) A capital cost per diem rate shall not be adjusted.

(4) Except for an appeal in accordance with Section 29 of this administrative regulation, no other adjustments (adjustment) shall not be made.

Section 11. Payment for Rehabilitation Hospital, Long-term Acute Care Hospital, and Psychiatric Hospitals. (1) Effective April 1, 2003, an inpatient service provided to an eligible Medicaid recipient in a rehabilitation hospital, L.T.A.C. hospital, or psychiatric hospital shall continue to be reimbursed at the per diem rate based on the 1999 cost report which was in effect for the rate year beginning July 1, 2002.

(2) Effective November 1, 2003, an inpatient service provided to an eligible Medicaid recipient in a psychiatric hospital previously designated by the department as a primary referral and service resource for a child in the custody of the Cabinet for Families and Children, or a rehabilitation hospital shall be reimbursed at the per diem rate of $439.75 [as established in subsection (1) of this section].

(3) An inpatient service provided to an eligible Medicaid recipient shall be reimbursed by multiplying the hospital's per diem rate by the number of patient days.

(4) A newly-participating rehabilitation hospital or L.T.A.C. shall be paid in accordance with Section 12 of this administrative regulation.

(5) A psychiatric hospital shall:

(a) Except as provided in paragraph (b) of this subsection, have a lower payment limit established on allowable Medicaid costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in its array.

(b) If the hospital has Medicaid utilization of thirty-five (35) percent or higher, have an upper limit set at 115 percent of the weighted median per diem cost for a hospital in its array.

(6) For a child under age six (6) years in a disproportionate share hospital or a child under age one (1) in a non-disproportionate share hospital, the following shall apply:

(a) For the first thirty (30) days of inpatient service reimbursed on a per diem basis, payment shall be in accordance with Sections 3, 7, 13, and 21 of this administrative regulation; and

(b) After thirty (30) days, an amount equal to 110 percent of the hospital's per diem rate shall be paid, and the payment shall apply.
1. To an inpatient service determined by the department to be medically necessary:
   a. Thirty (30) days after the date of admission of a child; or
   b. For a newborn, thirty (30) days from the date of discharge of the mother; and
   2. Without regard to length of stay or number of admissions.

Section 12, Payment to a Newly-participating Rehabilitation Hospital or LTAC. (1) A newly-participating rehabilitation hospital or LTAC shall submit an operating budget and projected number of patient days within thirty (30) days of receiving Medicaid certification.
   (2) A prospective rate shall be set based on the data referenced in subsection (1) of this section, not to exceed the upper limit for the class.
   (3) A prospective rate shall be tentative and subject to settlement at the time the first audited fiscal year end cost report is available to the department.
   (4) When a cost report is received and reviewed, a rate shall be set for the rehabilitation hospital or LTAC which shall be adjusted back to DRI to 1997 cost report data and trended forward for two (2) years for inflation by a rate of three (3) percent for the first year and two and eight-tenths (2.8) percent for the second year. [Acute-Care Hospital and Rehabilitation-Hospital-Inpatient Services. (1) The reimbursement rate for an acute-care hospital or for a rehabilitation hospital for the rate year beginning July 1, 2000 shall be determined by utilizing a rate-on-rate methodology as follows:
   a. The department shall utilize a hospital's June 30, 2000, per diem rate that includes: operating, professional, and capital cost components; and
   b. The per diem rate shall be multiplied by the rate of increase of two and eight-tenths (2.8) percent;
   (2) A payment for a child under age six (6) years shall be made in accordance with Section 14 of this administrative regulation;
   (3) Payment for the following transplants shall be made in accordance with this section:
   (a) Kidney;
   (b) Cornea;
   (c) Pancreas; or
   (d) Kidney and pancreas;
   (4) Payment for a transplant not listed in subsection (3) of this section shall be made in accordance with 907 KAR 1:360; and
   (5) Payment for a federally defined hospital swing bed shall be made in accordance with 907 KAR 1:360.

Section 14, Psychiatric Hospital Inpatient Service. (1) The Department for Medicaid Services shall pay for an inpatient psychiatric hospital service provided to an eligible Medicaid recipient in a psychiatric hospital by multiplying the hospital's per diem rate by the number of allowed patient days.
   (2) The per diem rate for a psychiatric hospital for the universal rate year beginning on or after July 1, 2000 shall be determined by the department in accordance with Sections 6 through 13 and 15 of this administrative regulation.
   (3) A payment for a child under age six (6) years shall be made in accordance with Section 14 of this administrative regulation.

Section 13, [6] Critical Access Hospital. (1) The department shall pay for an inpatient service provided by an in-state [6] critical access hospital to an eligible Medicaid recipient through an interim per diem rate as established by CMS [the Centers for Medicare and Medicaid Services (CMS)] for the Medicare Program.
   (2) The effective date of a rate shall be the same as used by the Medicare Program.
   (3) A hospital's final reimbursement shall reflect any adjustment made by CMS [the Centers for Medicare and Medicaid Services (CMS)] for the Medicare Program.
   (4) The provisions of Sections 3 through 11 [6 through 16] of this administrative regulation shall not apply to a critical access hospital, except:
   a. A hospital shall be required to submit an annual Medicare/Medicaid cost report;
   b. The cost report submitted by a hospital shall be subject to audit and review; and
   c. Total payments made to a hospital under this section shall be subject to the payment limitation in 42 C.F.R. 447.271.
   (5) An out-of-state critical access hospital shall be paid the median per diem rate of in-state critical access hospitals.
   (6) Payment for a federally defined swing bed in a critical access hospital shall be made in accordance with 907 KAR 1:365.

Section 14, Cost Basis. (1) A hospital per diem rate shall be established relating to allowable Medicaid costs and Medicaid inpatient days.
   (2) An allowable Medicaid cost shall:
   a. Be a cost allowed after a Medicaid or Medicare audit;
   b. Be in accordance with 42 C.F.R. Parts 412 and 413;
   c. Include a hospital provider tax; and
   d. Not include costs listed in Section 15 of the Medicaid Reimbursement Manual for [Inpatient] Hospital Inpatient Services.
   (3) The most recent Medicaid cost report for rehabilitation hospitals, LTAC hospitals, critical access hospitals, psychiatric services in acute care hospitals, and psychiatric hospitals available as of May 1 preceding the current universal rate year shall:
   a. Be the basis of a prospective payment; and
   b. Establish the base year.
   (4) A prospective rate shall include both routine and ancillary costs.
   (5) A prospective rate shall not be subject to retroactive adjustment except for:
   a. A critical access hospital; or
   b. A facility with a rate based on unaudited data.
   (6) A facility listed in subsection (5)(a) or (b) of this section shall have its rate revised by the department for the universal rate year when the audited cost report for the base year becomes available to the department.
   (7) Total Medicaid payments to a hospital shall be consistent with the requirements of 42 C.F.R. 447.271.
   (8) An overpayment shall be recouped by the department as follows:
   a. A provider owing an overpayment shall submit the amount of the overpayment to the department; or
   b. The department shall withhold the overpayment amount from a future Medicaid payment due the provider.

[Section 6, Use of a Prospective Rate. (1) A hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days.
   (2) An allowable Medicaid cost shall:
   a. Be a cost allowed after a Medicaid or Medicare audit;
   b. Be in accordance with 42 C.F.R. Parts 412 and 413;
   c. Include a hospital provider tax; and
   d. Not include costs listed in Section 13(14)(c) and (d) of this administrative regulation or Section 105 of the Medicaid Reimbursement Manual for Hospital Inpatient Services.
   (3) The most recent Medicaid cost report available as of May 1 preceding the current universal rate year shall:
   a. Be the basis of the prospective payment; and
   b. Establish the base year.
   (4) A prospective rate shall include both routine and ancillary costs.
   (5) A prospective rate shall not be subject to retroactive adjustment except for:
   a. A critical access hospital; or
   b. A facility with a rate based on unaudited data.
   (6) A facility listed in subsection (5)(a) or (b) of this section shall have its rate revised by the department for the universal rate year when the audited cost report for the base year becomes available to the department.
   (7) Total Medicaid payments to a hospital shall be consistent with the requirements of 42 C.F.R. 447.271.
   (8) An overpayment shall be recouped by the department as follows:
   a. A provider owing an overpayment shall submit the amount of the overpayment to the department; or
   b. The department shall withhold the overpayment amount from a future Medicaid payment due the provider.]
Section 15. [7-] Use of a Universal Rate Year. (1) Except for the first year of the DRG per discharge system, a universal rate year shall be established as July 1 through June 30 of the following year to coincide with the state fiscal year.

(2) In the first year of the DRG per discharge system, the universal rate year shall be the fifteen (15) month period from April 1, 2003 through June 30, 2004 [a universal rate year shall be established as July 1 through June 30 of each year to coincide with the state fiscal year].

(3) [23] A hospital shall not be required to change its fiscal year to conform with a universal rate year.

Section 16. [8-] Trending of a Cost Report. (1) An allowable Medicaid cost, excluding a capital cost, as shown in a cost report on file in the department, both audited and unaudited, shall be trended to the beginning of the universal rate year to update a hospital’s Medicaid cost.

(2) The trending factor to be used shall be the inflation factor prepared by DRI for the period being trended.

Section 17. [9-] Indexing for Inflation. (1) After an allowable Medicaid cost has been trended to the beginning of a universal rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

(2) The indexing factor to be applied shall be the inflation factor prepared by DRI for the universal rate year.

Section 10. Peer-Grouping. (1) For rate-setting, a hospital shall be peer-grouped based on the number of beds licensed as of May 1 preceding the universal rate year.

(2) A peer-group shall be:
   (a) Zero to fifty (50) beds;
   (b) Fifty-one (51) to 100 beds;
   (c) 101-200 beds;
   (d) 201-400 beds; or
   (e) 401 beds or more.

(3) A Type III hospital shall not be included in the array for a facility with 401 beds or more but shall be subject to the upper payment limit for a facility with 401 beds or more.

(4) A psychiatric hospital shall not be peer-grouped but shall be in a separate array of psychiatric hospitals.

(5) A rehabilitation hospital or an acute-care hospital that is restricted to providing rehabilitation services shall not be:
   (a) Peer-grouped;
   (b) Arrayed; or
   (c) Subject to the operating cost upper payment limits.

Section 18. Minimum Occupancy Factor. (1) If a hospital’s minimum occupancy is not met, allowable Medicaid capital costs shall be reduced by:

   (a) Artificially increasing the occupancy factor to the minimum factor; and

   (b) Calculating the capital costs using the calculated minimum occupancy factor.

(2) The following minimum occupancy factors shall apply:

   (a) A sixty (60) percent minimum occupancy factor shall apply to a hospital with 100 or fewer beds;

   (b) A seventy-five (75) percent minimum occupancy factor shall apply to a hospital with 101 or more beds; and

   (c) A newly-constructed hospital shall be allowed one (1) full universal rate year before a minimum occupancy factor shall be applied.

Section 19. Reduced Depreciation Allowance. (1) The allowable amount for depreciation on a hospital building and fixtures, excluding major movable equipment, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital’s cost reports.

(2) The use of a reduced depreciation allowance shall not be applicable to a psychiatric hospital.

Section 20. Readmission. (1) An inpatient admission within fourteen (14) calendar days of discharge for the same diagnosis shall be considered a readmission and reviewed by the QIO.

(2) Reimbursement for a readmission with the same diagnosis shall be included in an initial admission payment and shall not be billed separately.

Section 21. Reimbursement for Out-of-state Hospitals. (1) An acute care out-of-state hospital shall be reimbursed for inpatient acute care services on a fully-prospective per discharge basis for the universal rate year beginning on or after April 1, 2003. The total per discharge reimbursement shall be the sum of an operating payment amount, a capital-related payment amount, and, if applicable, a cost outlier payment amount.

(a) The operating payment amount shall be based on the patient Medicare DRG classification. An operating payment amount shall be calculated for each discharge by multiplying a hospital’s operating base rate by the Kentucky-specific DRG relative weight. A hospital’s operating base rate shall be the Medicare national standardized amount, as adjusted by Medicare for each hospital using the Medicare wage index. An operating payment amount for an out-of-state provider shall exclude:

   1. The Medicare DSH operating adjustment factor; and

   2. The Medicare indirect medical education operating adjustment factor.

(b) The capital-related payment amount shall be made on a per discharge basis. A per discharge payment amount shall be calculated for each discharge by multiplying a hospital’s capital-related base rate by the Kentucky-specific DRG relative weight. A hospital’s capital-related base rate shall be the Medicare capital rate adjusted by Medicare for each hospital using the Medicare large urban-area adjustment factor when applicable and the Medicare geographic adjustment factor as published in the Federal Register. A capital-related payment amount for an out-of-state provider shall exclude:

   1. The Medicare DSH capital adjustment factor; and

   2. The Medicare indirect medical education capital adjustment factor.

(c) A cost outlier payment shall be made for an approved discharge meeting Medicaid criteria for a cost outlier for each Medicare DRG. A cost outlier shall be subject to QIO review and approval.

   1. The cost outlier threshold for an out-of-state claim shall be determined using the same method used to determine the cost outlier threshold for an in-state claim.

   2. The estimated cost of each discharge, for purposes of comparing the estimated cost of each discharge to the outlier threshold, shall be calculated by multiplying the sum of the hospital-specific operating and capital-related mean cost-to-charge ratios by the discharge-allowed charges.

   3. The outlier payment amount shall be eighty (80) percent of the amount that estimated costs exceed the discharge’s outlier threshold.

(2) An acute care out-of-state hospital shall be reimbursed for an inpatient psychiatric service on a fully-prospective per diem basis for the universal rate year beginning on or after April 1, 2003.

(a) Reimbursement for an inpatient psychiatric service shall be determined by multiplying a hospital’s psychiatric per diem rate by the number of allowed patient days.

(b) A psychiatric per diem rate shall be the sum of a psychiatric operating per diem rate and a psychiatric capital per diem rate.

1. The psychiatric operating per diem rate shall be the median operating cost, excluding graduate medical education, per day for all in-state acute care hospitals that have licensed psychiatric beds according to 902 KAR 20:180.

2. The psychiatric capital per diem rate shall be the median psychiatric capital per diem rate for all in-state acute care hospitals that have licensed psychiatric beds according to 902 KAR 20:180.

3. Reimbursement for a service in an out-of-state rehabilitation hospital shall be determined by multiplying a hospital’s rehabilitation per diem rate by the number of allowed patient days.

4. A rehabilitation per diem rate shall be the median rehabilitation per diem rate for all in-state rehabilitation hospitals.

5. Reimbursement for a service in an out-of-state psychiatric hospital shall be determined by multiplying a hospital’s psychiatric per diem rate by the number of allowed patient days.

(6) The department shall apply the requirements of 42 C.F.R.
VOLUME 30, NUMBER 10 – April 1, 2004

447.271 on a claim-specific basis to payments made under this section.

(Section 13. Upper Payment Limits and Payment-Principles. (1) Except as provided in subsection (3) of this section, an acute-care hospital with 101 beds or more shall have an upper payment limit established on allowable Medicaid costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost of the hospital’s peer group.

(2) Except as provided in subsection (3) of this section, an acute-care hospital with 100 beds or less shall have an upper payment limit on allowable Medicaid costs (except Medicaid capital costs and professional component costs) established at 110 percent of the weighted median per diem cost of the hospital’s peer group.

(3) An acute-care hospital with Medicaid utilization of twenty (20) percent or higher, or a hospital having twenty-five (25) percent or more nurse-days resulting from Medicaid-covered deliveries as compared to the total number of paid Medicaid-days, shall have an upper payment limit set at 120 percent of the weighted median per diem cost of the hospitals in its peer group.

(4) Except as provided in subsection (5) or (6) of this section, a state university-teaching hospital shall have an upper payment limit on allowable Medicaid costs (except Medicaid capital costs and professional component costs) established at 105 percent of the weighted median per diem cost of the hospitals’ peer group.

(5) A state university-teaching hospital having Medicaid utilization of twenty (20) percent or higher, or having twenty-five (25) percent or more nurse-days resulting from Medicaid-covered deliveries as compared to the total number of paid Medicaid-days, shall have an upper payment limit set at 126 percent of the weighted median per diem cost of the hospital’s peer group of 401 beds and up.

(6) A pediatric teaching hospital shall have an upper payment limit set at 126 percent of the weighted median per diem cost of its peer group.

(7) A psychiatric hospital shall:

(a) Except as provided in paragraph (b) or (c) of this subsection, have an upper payment limit established on allowable Medicaid costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in its array;

(b) If the hospital has Medicaid utilization of thirty-five (35) percent or higher, have an upper limit set at 116 percent of the weighted median per diem cost for a hospital in its array;

(c) Be exempt from the upper payment limit for its array if designated by the department as a primary referral and service source for a child in the custody of the Cabinet for Families and Children and the hospital has projected cost that is not less than 110 percent of the projected actual cost as follows:

1. Projected actual cost shall be determined by:
   a. The Medicare and Medicaid cost reports submitted by the hospital to the Department of Public Health and Human Services.
   b. Projected additional expenditures for the rate year, subject to a cost trend based on actual expenditures allowed on a Medicaid cost report;
   c. The Department of Public Health and Human Services.

2. If a desk review or audit of the most current cost report is completed after May 1 but prior to the universal rate setting for the year, the desk review or audit shall be utilized for rate setting.

3. An audit and desk review shall be conducted in accordance with the Medicaid Reimbursement Manual for Hospital Inpatient Services.

4. The payment principles established in this section, Section 2 of this administrative regulation, and the Medicaid Hospital Inpatient Services Reimbursement Manual shall govern reimbursement for an inpatient hospital service.

5. An array’s or an upper payment limit shall not be altered after being set by the department.

6. Professional component costs shall be trended and indexed separately in the same manner as operating costs, except that the upper payment limit shall not be established.

7. A provider-tax attributable to Medicaid utilization shall be an allowable cost.

8. The following limits shall be applied to a per diem rate increase for an acute-care hospital excluding a hospital restricted to rehabilitative services:

(a) Allowable rate growth from one rate year to the next rate year shall be limited to not more than one and one-half times the DRI inflation amount for the same time period;

(b) A limit shall be applied to the capital and operating cost per diem component;

(c) Rate growth beyond an amount specified in paragraph (a) of this subsection shall be an unallowable cost; and

(d) An unallowable cost resulting from the use of a limit established in paragraph (a) of this subsection shall not be included in the base for future rate setting.

Section 14. Payment for Inpatient Service for a Child Under Age Six (6) Years. For a child under age six (6) years in a disproportionate share hospital or a child under age one (1) year in a nondisproportionate share hospital, the following shall apply:

1. For the first thirty (30) days of inpatient service, payment shall be made in accordance with Sections 3, 4, 5, and 22 of this administrative regulation;

2. After thirty (30) days an amount equal to 110 percent of a hospital’s per diem rate shall be paid, and the payment shall apply:
   a. To the inpatient service of the department to be medically necessary:
      1. Thirty (30) days after the date of admission of a child;
      2. For a newborn, thirty (30) days from the date of discharge of the mother; and
   b. Without regard to length of stay or number of admissions.

Section 15. Acute Care Hospital, Rehabilitation Hospital, Critical Access Hospital, and Psychiatric Hospital- Inpatient Rates Effective for State Fiscal Year 2003-2004. (1) The reimbursement rate for the rate year beginning July 1, 2002, for an acute-care hospital or a rehabilitation hospital shall be the rate paid on June 30, 2002.

(2) The reimbursement rate for the rate year beginning July 1, 2003, for a critical access hospital shall be in accordance with Section 6 of this administrative regulation.

(3) The reimbursement rate for the rate year beginning July 1, 2002, for a state-owned or operated psychiatric hospital shall be in accordance with Sections 6 through 13 of this administrative regulation.

(4) Excluding a hospital under subsection (3) of this section, the reimbursement rate for the rate year beginning July 1, 2003, for a psychiatric hospital shall be the rate paid on June 30, 2002.

(5) The provisions contained in Sections 3, 4 and 6 and 8 through 13 of this administrative regulation shall not be applicable to a rate established in accordance with subsection (3), (2), and (4) of this section.

(6) The provisions contained in Section 14 of this administrative regulation shall be applicable to a rate established in accordance with this section.

Section 22. [16] Supplemental Payments. (1) In addition to a payment based on a rate developed under Section 3, 4, or 16 of this administrative regulation, the department shall make quarterly supplemental payments to:

(a) A hospital that qualifies as a nonstate pediatric teaching hospital in an amount:
   1. Equal to the sum of the hospital’s Medicaid shortfall for Medicaid recipients under the age of eighteen (18) plus an additional $250,000 ($1,000,000 annually); and
   2. Prospectively determined by the department with an end of the year settlement based on actual patient days of Medicaid recipients under the age of eighteen (18);

(b) A hospital that qualifies as a pediatric teaching hospital and additionally meets the criteria of a Type III hospital in an amount:
   1. Equal to the difference between payments made in accordance with Sections 3, 4, 5, and 7 of this administrative regulation and the amount allowable under 42 C.F.R. 447.272 (two percent of the base rate for each one (1) percent of Medicaid occu-
not to exceed the payment limit as specified in 42 C.F.R. 447.271;
2. That is prospectively determined with no [an] end of the year settlement; and
3. Based on the state matching contribution made available for this purpose by a facility that qualifies under this paragraph;
4. A hospital that qualifies as an urban trauma center hospital in an amount:
   1. Based on the state matching contribution made available for this purpose by a government entity on behalf of a facility that qualifies under this paragraph;
   2. Based upon a hospital's proportion of Medicaid patient days to total Medicaid patient days for all hospitals that qualify under this paragraph;
   3. That is prospectively determined with an end of the year settlement; and
4. That is consistent with the requirements of 42 C.F.R. 447.271;
(d) A hospital that qualifies as a psychiatric access hospital in an amount:
1. Equal to a hospital's uncompensated costs of providing services to Medicaid recipients and individuals not covered by a third-party payer, not to exceed $6 million annually; and
2. That is consistent with the requirements of 42 C.F.R. 447.271;
(e) A nonstate government-owned hospital as defined in 42 C.F.R. 447.272(a)(2) that has entered into an intergovernmental transfer agreement with the Commonwealth in an amount equal to the lesser of:
   1. The difference between the payments made in accordance with Section 31-4-or-15 of this administrative regulation and the maximum amount allowable under 42 C.F.R. 447.272; or
   2. The difference between the payments made in accordance with Section 31-4-or-16 of this administrative regulation and an amount consistent with the requirements of 42 C.F.R. 447.271; and
(f) A private, nongovernment owned or operated hospital in an amount:
   1. Proportional to its Medicaid cost as compared to the total Medicaid costs of all hospitals qualifying under this paragraph;
   2. Not to exceed its Medicaid shortfall; and
   3. Subject to available funds in accordance with an intergovernmental transfer agreement under paragraph (e) of this subsection and Section 3 of 907 KAR 1:015[E]. Available funds shall be:
      a. An amount equal to fifty (50) percent of the payments received by hospitals under paragraph (e) of this subsection after deducting the nonfederal share of the funds, less the total Medicaid shortfall of hospitals participating under paragraph (e) of this subsection; and
      b. Matched with federal funds.
(2) An overpayment made to a facility under this section shall be recovered by subtracting the overpayment amount from a succeeding year's payment to be made to the facility.
(3) For the purpose of this section of this administrative regulation, Medicaid patient days shall not include days for a Medicaid recipient eligible to participate in the state's Section 1115 waiver as described in 907 KAR 1:705.
(4) A payment made under this section of this administrative regulation shall not duplicate a payment made under Section 23 [147] of this administrative regulation.
(5) A payment made in accordance with subsection (1)(d) and (e) of this section shall be for a service provided on or after April 2, 2001.
(6) A payment made in accordance with subsection (1)(f) of this section shall be for a service provided on or after November 5, 2001.
(7) A payment made in accordance with this section of this administrative regulation shall be in compliance with the limitations in 42 C.F.R. 447.272.
(8) A supplemental payment for DRGs 385 through 390 shall be made to a hospital with a Level II neonatal center that meets the following qualifications:
   a. Is licensed for a minimum of twenty-four (24) neonatal level II beds;
   b. Has a minimum of 1,500 Medicaid neonatal level II patient days per year;
   c. Has a gestational age lower limit of twenty-seven (27) weeks; and
   d. Has a full-time perinatologist on staff.
Section 23 [147] Disproportionate Share Hospital Payment. (1) A disproportionate share hospital payment shall be made to a qualified hospital based upon available funds in accordance with KRS 205.640. *(blank)*
(2) For DSH calculation purposes, a per diem used shall be the per diem in effect March 31, 2003.
(3) A payment to a Type I hospital or a Type II hospital shall:
   a. Be a prospective amount;
   b. Be distributed based upon a hospital's proportion of indigent care; and
   c. Not be subject to settlement or revision based on a change in utilization during the year to which it applies.
(4) [33] The cost of indigent care for the purpose of making a payment to a Type I hospital or Type II hospital shall be determined by:
   a. Calculating the costs of indigent care by multiplying each day of indigent care provided by the facility by its Medicaid per diem rate on file March 31, 2003 [August 1, 2000]; and
   b. Multiplying each facility's indigent outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25:091. Calculating the costs of outpatient care by:
      1. Calculating an outpatient to inpatient ratio by dividing a hospital's average Medicaid outpatient payment per visit by its average Medicaid inpatient payment per day; and
      2. Multiplying the number of outpatient visits by the ratio determined in subparagraph 1 of this paragraph by the facility's Medicaid per diem rate on file as of August 1, 2000.
(5) Effective October 1, 2001, the cost of indigent care for the purpose of making a payment to a Type I or Type II hospital shall be determined by:
   a. Calculating the costs of indigent care by multiplying each day of indigent care provided by the facility by its Medicaid per diem rate on file August 1, 2001; and
   b. Multiplying each facility's outpatient charges by the most recent cost-to-charge ratio used by the Department of Labor in accordance with 803 KAR 25:091.
(6) Distributions to a Type III hospital shall:
   a. Be based on a facility's historical proportion of the costs of services to Medicaid recipients, minus the amount paid by Medicaid under Sections 3, 4 and 18 [147-168] of this administrative regulation, plus the costs of services to indigent and uninsured patients minus any payments made on behalf of indigent and uninsured patients;
   b. Be a prospective amount and shall not be subject to settlement or revision based on a change in utilization during the year to which it applies;
   c. Be made on an annual basis; and
   d. Be contingent upon a facility providing up to 100 percent of matching funds to receive federal financial participation for payments under this subsection.
(7) Distributions to a Type IV hospital shall:
   a. Be equal to the costs of services provided to indigent patients minus any payments made on behalf of an indigent individual;
   b. Be proportionally reduced by the department if the cost exceeds available funds; and
   c. Be made annually.
(8) For dates of service beginning December 2, 2003, a supplemental Medicaid shortfall DSH payment shall be added per paid claim for inpatient hospital services reimbursed in accordance with Section 3 of this administrative regulation:
   a. The supplemental payment shall be in effect until whichever of the following events occurs first:
      1. The maximum total amount paid in accordance with this subsection reaches $20 million; or
   b. The supplemental payment shall not apply to:
      1. A claim that is paid at a rate of zero dollars;
2. A claim for a psychiatric service; or
3. A claim for a transplant.

Section 24, [48.] Indigent Care Eligibility. (1) Prior to billing a patient and prior to submitting the cost of a hospital service to the department as uncompensated, a hospital shall use the indigent care eligibility form, Application for Disproportionate Share Hospital Program (DSH-001), to assess a patient's financial situation to determine if:

(a) Medicaid or Kentucky Children's Health Insurance Program (KCHIP) may cover hospital expenses; or
(b) A patient meets the indigent care eligibility criteria.

(2) An individual referred to Medicaid or KCHIP by a hospital shall apply for the referred assistance (Medicaid or KCHIP) within thirty (30) days of completing the DSH-001 form at the hospital.

Section 25, [49.] Indigent Care Eligibility Criteria. (1) A hospital shall receive funding for an inpatient or outpatient medical service provided to an indigent patient under the provisions of Sections 23 and 24 [47-and 48] of this administrative regulation if the following applies:

(a) The patient is a resident of Kentucky;
(b) The patient is not eligible for Medicaid or KCHIP;
(c) The patient is not covered by a third-party payor;
(d) The patient is not in the custody of a unit of government that is responsible for coverage of the acute care needs of the individual;
(e) The hospital shall consider all income and countable resources of the patient's family unit and the family unit shall include:
   1. The patient;
   2. The patient’s spouse;
   3. The minor’s parent or parents living in the home; and
   4. Any minor living in the home;
(f) A household member who does not fall in one (1) of the groups listed in paragraph (e) of this subsection shall be considered a separate family unit;
(g) Countable resources of a family unit shall not exceed:
   1. $2,000 for an individual;
   2. $4,000 for a family unit size of two (2); and
   3. Fifty (50) dollars for each additional family unit member;
(h) Countable resources shall be reduced by unpaid medical expenses of the family unit to establish eligibility; and
(i) The patient or family unit's gross income shall not exceed the federal poverty limits published annually in the Federal Register and in accordance with KRS 205.640.

(2) Except as provided in subsection (3) of this section, total annual gross income shall be the lesser of:

(a) Income received during the twelve (12) months preceding the month of service; or
(b) The amount determined by multiplying the patient’s or family unit’s income, as applicable, for the three (3) months preceding the date the service was provided by four (4).

(3) A work expense for a self-employed patient shall be deducted from gross income if:

(a) The work expense is directly related to producing a good or service; and
(b) Without it the good or service could not be produced.

(4) A hospital shall notify the patient or responsible party of his eligibility for indigent care.

(5) If indigent care eligibility is established for a patient, the patient shall remain eligible for a period not to exceed six (6) months without another determination.

Section 26, [50] Indigent Care Eligibility Determination Fair Hearing Process. (1) If a hospital determines that a patient does not meet indigent care eligibility criteria as established in Section 25 [49] of this administrative regulation, the patient or responsible party may request a fair hearing regarding the determination within thirty (30) days of receiving the determination.

(2) If a hospital receives a request for a fair hearing regarding an indigent care eligibility determination, impartial hospital staff not involved in the initial determination shall conduct the hearing within thirty (30) days of receiving the hearing request.

(3) A fair hearing regarding a patient's indigent care eligibility determination shall allow the individual to:

(a) Review evidence regarding the indigent care eligibility determination;
(b) Cross-examine witnesses regarding the indigent care eligibility determination;
(c) Present evidence regarding the indigent care eligibility determination; and
(d) Be represented by counsel.

(4) A hospital shall render a fair hearing decision within fourteen (14) days of the hearing and shall provide a copy of its decision to:

(a) The patient or responsible party who requested the fair hearing; and
(b) The department.

(5) A fair hearing process shall be terminated if a hospital reverses its earlier decision and notifies, prior to the hearing, the patient or responsible party who requested the hearing.

(6) A patient or responsible party may appeal a fair hearing decision to a court of competent jurisdiction in accordance with KRS 13B.140.

Section 27, [51] Indigent Care Reporting Requirements. (1) On a quarterly basis, a hospital shall collect and report to the department indigent care patient and cost data.

(2) If a patient meeting hospital indigent care eligibility criteria is later determined to be Medicaid or KCHIP eligible or has other third-party payor coverage, a hospital shall adjust its indigent care report previously submitted to the department in a future reporting period.

Section 28, Retrospective Review. (1) A claim paid in accordance with Section 3 of this administrative regulation shall be subject to retrospective review by the OIO.

(2) An amount paid that is found to be in error shall be recouped by the department in the next payment cycle.

(3) A payment that has been recouped by the department shall not be subject to administrative review.

22. Payment to a Participating Out-of-state Hospital. (1) A participating out-of-state hospital shall be reimbursed for a covered inpatient service provided to an eligible Kentucky Medicaid recipient at the lesser of:

(a) Seventy-five (75) percent of its usual and customary charges; or
(b) A per diem rate equal to the in-state operating per diem upper limit for a comparable size hospital plus:
   1. A provision for capital cost that is equal to the mean capital cost per diem for the appropriate peer group in accordance with Section 10 of this administrative regulation; and
   2. A provision for professional component costs that shall be at seventy-five (75) percent of charges.

(2) Payments for a child under age six (6) years in a disproportionate share hospital or under age one (1) year in a non-disproportionate share hospital shall be made at the lesser of:

(a) Eighty-five (85) percent of usual and customary charges; or
(b) The amount specified in Section 14 of this administrative regulation.

(3) For the universal rate year beginning July 1, 1999, the per diem rate shall be an amount equal to the per diem determined by increasing the per diem determined under subsection (1)(b) of this section for universal rate year 1999, by three (3) percent.

(4) For the universal rate year beginning July 1, 2000, the per diem rate shall be an amount equal to the per diem rate determined under subsection (3) of this section, increased by two and eight-tenths (2.8) percent.

(5) For the universal rate year beginning July 1, 2001, the per diem rate shall:

(a) Be the rate in effect on June 30, 2001; and
(b) Include—operating, capital, and professional component costs.

(6) For the universal rate year beginning July 1, 2002, the per diem rate shall be in accordance with Section 15 of this administrative regulation.

Section 23. Provider Appeal Rights. (1) Pursuant to 42 C.F.R. 447.253(e), an appeal filed to review an individual hospital's rate
shall be limited to the following:

(a) Increased costs related to allowable inpatient cost centers resulting from a capital expenditure requiring a certificate of need;

(b) Increased costs related to allowable inpatient cost centers resulting from a capital expenditure not requiring a certificate of need meeting a qualifying determining amount of at least twenty-five (25) percent of its total fixed assets as reported on Worksheet G Line 21 of its base year Medicare cost report; and

(c) A mathematical or clerical error by the department. An appeal presented by the provider for a mathematical or clerical error made by the department shall not be required to meet the provisions established in subsection (2) of this section.

(2) The costs that represent the subject matter of an appeal shall increase the current per diem rate by at least five (5) percent in order for any relief to be granted.

(3) An appeal shall follow the review and appeal mechanism established in 907-KAR-1:674, the provisions of KRS Chapter 13B, and Section 113 of the "Medicaid Reimbursement Manual for Hospital Inpatient 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: November 25, 2003

FILED WITH LRC: December 2, 2003 at 2 p.m.

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.
KENTUCKY STATE BOARD OF ELECTIONS
(Provision)

31 KAK 3:010. Current address of Kentucky registered voters and distribution of voter registration lists.

RELATES TO: KRS 116.085, 116.155, 117.025, 117.225

STATUTORY AUTHORITY: KRS 117.015, 117.025(3)(h)

NECESSITY, FUNCTION, AND CONFORMITY: This administr-
ative regulation exists to assure that all information listed upon
the Statewide Voter Registration Roster is accurate, current, and
up-to-date. In addition KRS 117.025(3)(h) requires the Board of
Elections to provide a voter registration list of currently registered
voters to specific entities and persons. The statute also prohibits
the Board of Elections from releasing a voter registration list to a
person who intends to use the list for commercial use. This admin-
istrative regulation provides standards on when a request for a
voter registration list which may involve a commercial use shall
be granted or denied.

Section 1. Definitions. (1) "Alphabetical labels" means labels of
registered voters within the precinct with one (1) name per label
and sorted in alphabetical order.

(2) "Alphabetical lists" means lists of registered voters sorted in
alphabetical order by last name within a precinct that have the
name, address, age code, party, gender, zip code, and five (5)
year voting history of every voter in the precinct.

(3) "CD-ROM" means a compact computer disc with read-only
memory containing the voter's name and address, county code,
precinct code, gender, party, zip code, date of birth, date of registra-
tion, and five (5) year voting history.

(4) "Household labels by street order" means labels that are
sorted by street address within the precinct with as many as four
names per label of the voters whose last name and address are
an identical match.

(5) "Household labels by zip code order" means labels that are
sorted by zip code within the county with as many as four (4)
names per label of the voters whose last name and address are
an identical match.

(6) "Street order lists" means lists of registered voters sorted in
street order within a precinct and contain the name, address, age
code, party, gender, zip code, and a five (5) year voting history of
every registered voter in the precinct.

Section 2. [1.] Each county clerk shall instruct the precinct
election officers of the necessity for informing each voter that he or
she shall [must] correct any error existing in his or her address as it
appears upon the precinct roster.

Section 3. [2.] Each precinct election officer shall instruct each
voter to correct any error existing in his or her address as it
appears upon the precinct roster.

Section 4. [3.] Each voter shall, at the time he or she signs the
precinct roster, correct any error existing in his or her address as it
appears upon the precinct roster.

Section 5. [4.] Each county clerk shall take whatever steps are
necessary to correct and update each voter's address upon the
statewide [master] voter registration database [roster].

Section 6. Interpretation of Commercial Use. (1) Commercial
use, as that term is used in KRS 117.025 (3)(h), shall be inter-
preted by the Board of Elections to be:

(a) The use by the requester of the voter registration list, or any
part of the list, in any form directly or indirectly, for sale or adver-
tisement of any good or service; or

(b) The transfer of the list by the requester for a profit to any
other person whom the requester knew or should have known
intended to use the voter registration list, or part of that list, for the
sale or advertisement of a good or service.

(2) Sale of a voter registration list shall be deemed to include
any sale, rental, distribution, offer for sale, rental or distribution, or
attempt directly or indirectly to sell, rent or distribute the list.

Advertising means any attempt by publication, dissemi-
nation, solicitation, or circulation to induce, directly or indirectly,
any person to enter into any obligation, or acquire any title or inter-
est in any good or service.

(4) Request for a copy of the voter registration list shall be
granted by the Board of Elections for the following purposes:

(a) Use for scholarly, journalistic, political (including political
fund raising), or governmental purposes; or

(b) Publication, broadcast, or related use by a newspaper,
magazine, radio station, television station, or other news medium
in its news or other publications or broadcasts.

Section 7. Requests for Voter Registration Lists. (1) A request
for voter registration lists shall be made by submitting a completed
form SBE-54(02/04) to the State Board of Elections with payment
of costs as follows:

(a) The minimum charge for lists and label orders shall be ten
(10) dollars.

(b) The charge for alphabetical lists shall be four (4) dollars per
precept.

(c) The charge for street order lists shall be four (4) dollars per
precept.

(d) The charge for alphabetical labels shall be ten (10) dollars
per thousand labels.

(e) The charge for household labels by street order shall be ten
(10) dollars per thousand labels.

(f) The charge for household labels by zip code order shall be ten
(10) dollars per thousand labels.

(g) The minimum charge for CD-ROM shall be twenty-five (25)
dollars.

(h) The charge for CD-ROM shall be one (1) dollar per 1,000
records up to 100,000 records; fifty (50) cents per thousand rec-
ords over 100,000 records; $450 statewide.

Section 8. Incorporation by Reference. (1) Request for Voter
Registration Data. SBE-54(02/04).

(2) This material may be inspected, copied, or obtained, at the
offices of the State Board of Elections, 140 West Walnut Street,
140 West Walnut Street, Frankfort, Kentucky 40601, Monday through
Friday, 8 a.m. to 4 p.m.

TREY GRAYSON, Chairman
APPROVED BY AGENCY: March 3, 2004
FILED WITH LRC: March 10, 2004 at 3 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hear-
ing on this administrative regulation shall be held on April 29, 2004,
at 10 a.m. local time at the State Board of Elections, 140 Walnut
Street, Frankfort, Kentucky 40601. Individuals interested in being
heard at this hearing shall notify this agency in writing by April 22,
2004, 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 wishes to be heard will be given an oppor-
tunity 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 pro-
posed administrative regulation. Written comments shall be ac-
tcepted until May 3, 2004. Send written notification of intent to at-
tend the public hearing or written comments on the proposed ad-
mnistrative regulation to the contact person.

CONTACT PERSON: Sarah B. Johnson, Executive Director,
Kentucky Board of Elections, 140 Walnut Street, Frankfort, Ken-
tucky 40601, phone (502) 573-7100, fax (502) 573-4369.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sarah B. Johnson

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the procedures that county clerks, precinct election officers, and voters are to follow in order to secure the accuracy of data contained in a statewide voter registration database. In addition, the regulation describes when and how someone may receive a copy of the data in the system.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that county clerks, precinct election officers, and voters are aware of their rights and duties.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 117.015(1) authorizes the board to promulgate administrative regulations governing the conduct of elections. KRS 117.025(3)(h) prohibits releasing the list of voters to someone who intends to use it for a commercial use.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines the term commercial use and describes the procedures to be followed by county clerks, precinct election officers, and voters.

(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 defines the term commercial use.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to assure a consistent interpretation of the term commercial use as it affects the public.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies KRS 117.025(3)(h) by defining the term commercial use.
(d) How the amendment will assist in the effective administration of the statutes: The amendment provides the public with a better understanding of how the agency will apply the statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All voters, election officers, political parties, businesses interested in voter lists, and candidates for election and their supporters.

(4) Provide an assessment of how the above groups will be impacted by the implementation of this amendment to this administrative regulation: The groups will have a better understanding of the definition of commercial use and the procedures for requesting voter registration data.

(5) Estimate of how much it will cost to implement this administrative regulation: Initially: There are costs associated with printing and distributing the Request for Voter Registration Data form and training election officials. These costs shall be paid from existing budgets for FYE 2004.

(6) On a continuing basis: None

(7) What is the source of funding for the implementation and enforcement of this administrative regulation: Costs for implementing this regulation will be funded by state funds appropriated to the State Board of Elections.

(8) If the administrative regulation establishes any fees or funding will be necessary to implement this administrative regulation: No fees are involved. Additional funding will not be necessary to implement this administrative regulation.

(9) Whether this administrative regulation applies to all parties: No

TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies equally to all parties.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(AMENDMENT)


RELATES TO: KRS 42.035, 42.037
STATUTORY AUTHORITY: KRS 42.035, 42.037
NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.035 and 42.037 direct that reasonable amounts shall be deducted from the salary or other allowance, of the Governor and Lieutenant Governor for the consumption of food by them and their families, and of other state employees required by their regular duties to receive meals at the Governor's or Lieutenant Governor's mansions. This administrative regulation sets forth the maintenance charges to be paid by the Governor and the Lieutenant Governor relative to members of their families living at the respective mansions and by other state employees required by their regular duties to receive meals at the respective mansions. [The amendment brings the administrative regulation into compliance with KRS 13A.222(4)(e) as requested by the Interim Joint Committee on State Government.]

Section 1. (1) Monthly maintenance charges shall be paid by the Governor, Lieutenant Governor, and all state employees required by their regular job duties to receive [all persons receiving] meals at the Executive Mansion or [and] the Lieutenant Governor's Mansion.

(2) Payment shall be made [bimonthly] by means of a twice monthly deduction from the salary paid on the regular payroll.

Section 2. The monthly maintenance charges to be paid by the Governor and Lieutenant Governor for [relative-to-the] members of their respective families living at the respective mansions shall be as follows:
(1) The Governor, Lieutenant Governor, and adult members of their respective families, $200 [eighty-
(2) Children between the ages of twelve (12) and seventeen [eighty-
(3) Children under twelve (12) years of age, ninety (90) [thirty-six (36)] dollars each.

Section 3. [Except as provided in Section 4 of this administrative regulation, the] Monthly maintenance charges to be paid by [all other state employees and the security detail, required by their regular duties to receive meals at the respective mansions, shall be sixty (60) dollars, as follows:
(1) Forty (40) dollars for one (1) meal;
(2) Sixty-two (62) dollars for two (2) meals;
(3) Eighty (80) dollars for three (3) meals.

Section 4. If the executive officer having use of the particular mansion is not regularly occupying it as a residence, monthly maintenance charges to be paid by state employees, required by their regular duties to receive meals at that mansion, shall be as follows:
(1) Sixteen (16) dollars for one (1) meal;
(2) Twenty-five (25) dollars for two (2) meals;
(3) Thirty-two (32) dollars for three (3) meals.

ROBERT B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 13, 2004
FILED WITH LRC: February 17, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on April 27, 2004, at 10 a.m. at Berry Hill Mansion, 1st floor dining room, Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by April 20, 2004, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this pro-
posed 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. Writ-
ten comments shall be accepted through May 3, 2004. Send writ-
ten notification of intent to be heard at the public hearing or written
comments on the proposed administrative regulation to the contact
person.

CONTACT PERSON: David N. Clinkenbeard, Acting Director,
Division of Historic Properties, Berry Mansion 700 Louisville Road.
Frankfort, Kentucky 40601, phone (502) 564-3000 ext. 231, and
fax (502) 564-6505.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David N. Clinkenbeard

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation
sets appropriate meal charges for the occupants of the Executive
Mansion and the Lieutenant Governor’s Mansion, as well as staff
who are required to be on site during meal times. This regulation
sets appropriate meal charges for the occupants of the Executive
Mansion and the Lieutenant Governor’s Mansion, as well as staff
who are required to be on site during meal times. Monthly amounts
for maintenance charges: Governor, Lieutenant Governor and
adult members of their families: $200 per month. Children between
the ages of 12 and 17: $120. Children under 12: $90. Employees:
$80.

(b) The necessity of this administrative regulation: To insure
that reasonable and proper charges are collected from the first and
second families and staff required to receive meals at the man-

(c) How this administrative regulation conforms to the content
of the authorizing statutes: KRS 42.035 and 42.037 direct that
reasonable amounts shall be deducted from the salary or other
allowance, of the Governor and Lieutenant Governor for the con-
sumption of food by them and their families, and from other em-
ployees required by their job duties to receive meals at the man-
ions. This administrative regulation sets forth the maintenance
charges to be paid.

(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adjust-
ment to the current maintenance charges helps to bring the
amounts to today’s values, making the charges fair and reason-
able.

(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: Adjusts the current maintenance charges to reflect to-
today’s values.
(b) The necessity of the amendment to this administrative regu-
lation: To insure that the Commonwealth is charging a fair and
reasonable amount for meal maintenance.
(c) How the amendment conforms to the content of the
authorizing statutes: KRS 42.035 and 42.037 direct that reason-
able amounts shall be deducted from the salary or other allowance,
of the Governor and Lieutenant Governor for the consumption of
food by them and their families, and from other employees re-
quired by their job duties to receive meals at the mansions. This
administrative regulation ensures that the maintenance charges are rea-
sonable.
(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendment restores proper dollar figures
that represent today’s values, making the maintenance charges fair and reasonable.

(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: The Governor and Lieutenant Governor and their
families, and all staff required to work at the mansions during meal
times.

(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: Each
entity will see an increase in the payroll deduction for maintenance
charges.

(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: 0
(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: No
funding is necessary

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: No increase in
fees or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This
regulation increases the meal maintenance charges to the Gover-
nor, Lieutenant Governor, and employees required by their job
duties to receive meals at the Governor’s and Lieutenant Gover-
nor’s mansions.

TIERING: Is tiering applied? Yes. The regulation estab-
lishes separate maintenance charges for adults and for children
based on their ages. It also establishes a separate maintenance
charge for employees required by their job duties to receive meals
at the Governor’s or Lieutenant Governor’s mansions.

BOARD OF LICENSURE FOR OCCUPATIONAL THERAPY
(Amendment)

201 KAR 28:130. Supervision of occupational therapy as-
sistants, occupational therapy aides, occupational therapy
students, and temporary permit holders.

RELATES TO: KRS 319A.010(4), (5), 319A.100
STATUTORY AUTHORITY: KRS 319A.070(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
319A.070(3)(i) authorizes the board to promulgate administra-
tive regulations to define appropriate supervision for persons who are
delivering occupational therapy services. This administrative regu-
lation establishes the requirements of that supervision and defines
terms necessary to clarify the statutory definition of occupational
therapy services.

Section 1. Definitions. (1) "Adjunct" means methods, strategies
or interventions that support and advance a client’s occupational
therapy performance used as a precursor to enable purposeful
activities or occupations.

(2) "Assisative technology" means any item, piece of equipment,
or product system, whether commercially available, modified or
custom designed, that is used to increase, maintain or enhance the
occupational performance of an individual.

(3) "Basic activities of daily living" means tasks or activities that
are oriented toward taking care of one’s own body; those tasks that
are performed daily by an individual that pertain to and support
one’s self-care, mobility, and communication and includes the fol-
lowing activities:
(a) Bathing and showering;
(b) Bowel and bladder management;
(c) Dressing;
(d) Eating and feeding;
(e) Functional mobility;
(f) Personal device care;
(g) Personal hygiene and grooming;
(h) Sexual activity;
(i) Sleep and rest; and
(j) Toilet hygiene.

(4) "Certified hand therapist" (CHT) means a person who is
certified by the Hand Therapy Certification Commission.

(5) "Cognitive components" means the skill and performance of
the mental processes necessary to know or comprehend by under-
standing with such skills including: orientation, conceptualization,
and comprehension, including concentration, attention span, mem-
ory, and cognitive integration including generalization, and prob-
lem-solving.

(6) "Components of performance" means the demands of an
activity which include human, object and contextual factors such as objects, space, social demands, sequencing or timing, required actions for performance and required underlying body functions and structures needed to carry out activities.

(7) "Countersign" means the OTL signs the client’s documentation after actively reviewing the history of the intervention provided to the client and confirming that, in light of the entire intervention plan, the OTA/L’s entry is proper.

(8) "Ergonomic principles" means:
(a) The study of:
1. Relationships between components of performance;
2. People as it relates to their occupations, the equipment they use and their environment; and
3. The application of that knowledge and skill as it focuses upon maximizing efficiency in the areas of production, quality and safety; and
(b) Principles that are utilized by occupational therapists to optimize an individual’s occupational performance in the areas of self-care, productivity, work and leisure and may include job analysis, consultation, and educational activities.

(9) "Face-to-face supervision" means being physically present in the room and being able to directly communicate with an individual while observing and guiding the activities of that individual, including:
(a) A review of the occupational therapy services being provided to a client that might affect the therapeutic outcomes and the revision of the plan of care for each client; and
(b) An interactive process between the supervisor and the individual under supervision involving direct observation, co-treatment, dialogue, teaching, and instruction in a face-to-face setting.

(10) "Functional mobility" means moving from one (1) position or place to another, such as in-bed mobility, wheelchair mobility, transportation of objects through space, and functional ambulating and transfers.

(11) "Gait training" means the instruction of proper walking patterns.

(12) "General supervision" means an interactive process for collaboration on the practice of occupational therapy which includes the review and oversight of all aspects of the services being provided by the individual under supervision.

(13) "Instrumental activities of daily living" means complex tasks or activities that are oriented toward interacting with the environment and are essential to self-maintenance matters which extend beyond personal care, including:
(a) Care of others;
(b) Care of pets;
(c) Child rearing;
(d) Communication device use;
(e) Financial management;
(f) Health management and maintenance;
(g) Home establishment, management, and maintenance;
(h) Meal preparation and cleanup;
(i) Safety procedures and emergency responses;
(j) Shopping; and
(k) Selection and supervision of caregivers.

(14) "Occupations" means activities, tasks or roles that individuals engage in which provide intrinsic value and meaning for the individual, society, and culture.

(15) "Performance abilities" means the utilization of performance abilities in the participation of active daily life.

(16) "Performance skills" means the observable actions of a person that have implicit functional purposes, including motor skills, processing skills, interaction skills, and communication skills.

(17) "Prevention" means the skill and the performance of the person to minimize debilitation with the treatment focusing on energy conservation, including activity restriction, work simplification, and time management, joint protection and body mechanics, including proper posture, body mechanics, and avoidance of excessive weight bearing, positioning and coordination of daily living activities.

(18) "Psychosocial component" means the skill and performance in self-management and interaction skills with such skills including: self-expression, self-control, interaction with another person, and interaction with groups of three (3) or more people.

(19) "Remediation" means an intervention approach designed to change client variables to establish a performance skill or ability that has not yet developed.

(20) "Restoration" means to restore a performance skill or ability that has been impaired.

(21) "Sensorimotor components" means the skill and performance of patterns of sensory and motor behavior of a person undergoing treatment with such skills, including neuromuscular activity, including reflex integration, range of motion, gross and fine motor coordination, strength and endurance, and sensory integration, including sensory awareness, visual-spatial awareness, and body integration.

(22) "Supervisor" means the OTL who is providing supervision.

Section 2. General Policy Statement for Supervision. (1) The OTL shall have the ultimate responsibility for occupational therapy outcomes. Supervision shall be a shared responsibility.
(2) The supervising OT/L shall have a legal and ethical responsibility to provide supervision and the supervisee shall have a legal and ethical responsibility to obtain supervision.
(3) Supervision by the OT/L of the supervisee’s provision of occupational therapy services shall always be required, even when the supervisee is experienced and skilled in a particular practice area.

Section 3. Supervision of Licensed Occupational Therapy Assistants. (1) An OTA/L shall assist in the practice of occupational therapy only under the supervision of an OT/L.
(2) The supervising OT/L shall provide no less than four (4) hours per month of general supervision for each occupational therapy assistant which shall include no less than two (2) hours per month of face-to-face supervision.
(3) The amount of supervision time shall be prorated for a part-time OT/L.
(4) The supervisor or the OTA/L may institute additional supervision based on the competence and experience of the OTA/L.
(5) The supervisor shall assign and the OTA/L shall accept only those duties and responsibilities for which the OTA/L has been specifically trained and which the OTA/L is qualified to perform.
(6) Specific responsibilities for supervising OT/Ls and OTA/Ls.
(a) Assessment and reassessment
1. Client evaluation is the responsibility of the OT/L.
2. The OT/L may contribute to the evaluation process by gathering data, administering structured tests, and reporting observations.
3. The OT/L may not evaluate independently or initiate therapy prior to the OT/L’s evaluation.
(b) Intervention planning
1. The OT/L shall take primary responsibility for the intervention planning.
2. The OT/L may contribute to the intervention planning as directed by the OT/L.
(c) Intervention
1. The OT/L shall be responsible for the outcome and delivery of the occupational therapy intervention.
2. The OT/L shall be responsible for assigning appropriate therapeutic interventions to the OT/L.
(d) Discontinuation of intervention
1. The OT/L shall be responsible for the discontinuation of occupational therapy services.
2. The OT/L may contribute to the discontinuation of intervention as directed by the OT/L.
(7) Documentation requirements
(a) The supervisor shall countersign those aspects of the initial evaluation, the plan of care, and the discharge summary (all documentation) recorded by the OT/L within fourteen (14) calendar days of the notation, which documentation shall be included in the client’s permanent record.
(b) The supervising OT/L and individuals under supervision shall maintain a supervising OT/L’s log which shall document:
1. The frequency and type of the supervision provided; and
2. The process of supervision utilized for each client, such as
(8) A supervising OT/L shall not have more than the equivalent of three (3) full-time OTAs/Ls under supervision at any one (1) time.

(9) (a) In extenuating circumstances, when the OT/L is without supervision, the OTA/L may continue carrying out established programs for up to thirty (30) calendar days under agency supervision while appropriate occupational therapy supervision is sought.

(b) It shall be the responsibility of the OTA/L to notify the board of these circumstances and to submit, in writing, a plan for resolution of the situation.

(10) A supervisor shall be responsible for ensuring the safe and effective delivery of OT services and for fostering the professional competence and development of the OTA/Ls under his or her supervision.

Section 4. Supervision of Occupational Therapy Aides. (1) An occupational therapy aide shall provide supportive services only with face-to-face supervision from an OT/L or OTA/L.

(2) The supervising OT/L or OTA/L shall be in direct verbal and visual contact with the occupational therapy aide, at all times, for all therapy-related activities.

Section 5. Occupational Therapy Students. (1) A person practicing occupational therapy and performing occupational therapy services under KRS 319A.090(1)(c) shall be enrolled in an ACOTE accredited occupational therapy or occupational therapy assistant educational program or its equivalent.

(2) When an occupational therapy student is participating in supervised fieldwork education experiences, the student may, at the discretion of the supervising OT/L or OTA/L, be assigned duties or functions commensurate with their education and training.

(3) A supervisor shall be responsible for ensuring the safe and effective delivery of OT services and for fostering the professional competence and development of the students under his or her supervision.

Section 6. Temporary Permits. (1) A temporary permit holder shall be:

(a) Supervised by an OT/L, and

(b) The OT/L shall be responsible for all occupational therapy outcomes.

(2) The supervising OT/L shall be available at all times to provide supervision.

(3) Face-to-face supervision shall be provided for at least thirty (30) minutes daily.

(4) The temporary permit holder who is applying for a license as an OT/L may perform all of the functions of the OT/L, with the exception of supervision.

(5) A temporary permit holder who is applying for a license as an OTA/L may perform all of the functions of an OTA/L, with the exception of supervision.

JULYA WESTFALL, Chairperson
APPROVED BY AGENCY: February 19, 2004
FILED WITH LRC: March 15, 2004 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 21, 2004, at 1 p.m., at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency by writing to April 14, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 3, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kristen Webb, Executive Director, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-
ENVELOPMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)

401 KAR 51:001. Definitions for 401 KAR Chapter 51.

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Chapter I, Part 50, Appendices A-K, 51.100(6), 51.121, 51.165, 51.166, 53, 60, Appendices A and B, 61, Appendix B, 75, 76, 42 U.S.C. 7410-7671q

STATUTORY AUTHORITY: KRS 224.10-100(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(6) requires the [Natural-Resources-and Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation defines the terms used in 401 KAR Chapter 51. The definitions contained in this administrative regulation that [which] have corresponding federal definitions have been clarified and simplified but [ ] are not more stringent nor otherwise different than the corresponding federal definitions.

Section 1. Definitions. (1) "Acid rain emissions limitation" means a limitation on emissions of SO₂ or NOx imposed by the Acid Rain Program under 42 U.S.C. 7651 to 7651o.

(3) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined according to the following:

(a) Actual emissions as of a particular date equals the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four (24) month period, which precedes that date and is representative of normal source operation.

1. Use of a different time period is allowed if the cabinet determines that a different time period is more representative of normal source operation; and

2. The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period are used to calculate actual emissions.

(b) The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(c) For an emissions unit, which has not begun normal operations on the particular date, actual emissions equals the potential to emit of the unit on that date.

(d) This definition does not include:

1. Calculating if a significant emissions increase has occurred; or

2. Establishing a PAL under 401 KAR 51:017, Section 23.

(3) "Actuals PAL" or "PAL" means a plant-wide applicability limit established for a major stationary source based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(4) "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Class I area. This determination:

1. Is to be made on a case-by-case basis;

2. Considers the geographic extent, intensity, duration, frequency and time of visibility impairment and how these factors correlate with the times of visitor use of the Class I area; and

3. Considers the frequency and timing of normal conditions that reduce visibility.

(5) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities that [which] emits or may emit an air contaminant to the outdoor atmosphere.

(6) (9) "Air contaminant" is defined in KRS 224.01-010(1).

(7) (44) "Air pollutant" means air contaminant.

(8) (66) "Air pollution" is defined in KRS 224.01-010(3).

(9) (61) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(10) (77) "Allocate" or "allocation" means the determination by the cabinet of the number of NOx allowances to be credited to a NOx budget unit.

(11) (88) "Allocation period" means each three (3) year period beginning May 1, 2004.

(12) "Allowable emissions" means:

(a) The emissions rate of a stationary source that is calculated using the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate, or hours of operation, or both, and the most stringent of the following:

1. The applicable standards of 40 C.F.R. Parts 60 and 61;

2. The applicable SIP emissions limitations, including those with a future compliance date; or

3. The emissions rates specified as a federally enforceable permit condition, including those with a future compliance date; or

(b) For an actuals PAL, the emissions rate of a stationary source that is calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit, and the most stringent provision of paragraph (a) to 3 of this subsection.

(13) (99) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source, or

(b) A physical change in or change in the method of operation of an affected facility that [which] increases the potential to emit a pollutant (to which a standard applies) emitted by the facility or that [which] results in the emission of an air contaminant (to which a standard applies) not previously emitted.

(14) (110) "Alternative method" means a method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to produce adequate results for its determination of compliance.

(15) (143) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(16) (142) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(17) (143) "ANSI" means American National Standards Institute.

(18) (144) "AOAC" means Association of Official Analytical Chemists.


(20) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, that:

(a) For an existing electric utility steam generating unit (EUSGU), the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the five (5) year period immediately preceding the date the owner or operator begins actual construction of the project.

(b) Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph;

2. Use of a time period other than the twenty-four (24) month period is allowed, if the cabinet determines that a different time period is more representative of normal source operation; and

3. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed, where a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant.
(b) For an existing emissions unit that is not an EUSGU, the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period beginning on or after November 15, 1990, and immediately preceding the earlier of the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the cabinet for a permit required under 401 KAR 51:017 or 401 KAR 51:052.

1. The rate is an average that;
   a. Includes fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions;
   b. Is adjusted downward;
   i. To exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period;
   ii. To exclude any emissions that would have exceeded an emission limitation with which the major stationary source is required currently to comply, if the source had been required to comply with the limitations during the consecutive twenty-four (24) month period.
   iii. For an emission limitation that is part of a maximum achievable control technology standard proposed or promulgated under 40 C.F.R. Part 63, only if the Commonwealth of Kentucky has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with 40 C.F.R. 51.156(a)(3)(ii)(G);
   iv. Is based on a consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph; and
2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed; however, a different consecutive twenty-four (24) month period is allowed for each regulated NSR pollutant.

(c) For new emissions units, equals zero for determining the emissions increase that will result from the initial construction and operation of the new unit and thereafter, for all other purposes, equals the unit's potential to emit.

(d) For a PAL for a stationary source, is determined as follows:
1. For an existing EUSGU, in accordance with the procedures contained in paragraph (a) of this subsection;
2. For other existing emissions units, in accordance with the procedures contained in paragraph (a) of this subsection; and
3. For a new emissions unit, in accordance with the procedures contained in paragraph (b) of this subsection.

(21) "Baseline area" means an intrastate area and every part of that area, designated as attainment or unclassifiable pursuant to 42 U.S.C. 7404(d)(1)(A)(ii) or (iii) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1) µg/m³ annual average of the pollutant for which the minor source baseline date is established.

(a) Area redesignations under 42 U.S.C. 7404(d)(1)(A)(ii) or (iii) cannot intersect or be smaller than the area of impact of a major source or major modification which:
1. Establishes a minor source baseline date; or
2. Is subject to 401 KAR 51:017 and would be constructed in the Commonwealth of Kentucky.
(b) A baseline area established originally for total suspended particulate (TSP) increments remains in effect to determine the amount of available PM10 increments, unless the cabinet rescinds the corresponding minor source baseline date.

(22) "Baseline concentration" means the ambient concentration level that exists in the baseline area on the date the applicable minor source baseline date is established.

(a) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and includes:
1. The actual concentrations representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b) of this subsection; and
2. The allowable emissions of major stationary sources that commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.
(b) The following are not included in the baseline concentration and thus affect the maximum applicable allowable increase:
1. Actual emissions at a major source, which result from construction commencing after the major source baseline date; and
2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.

(23) "Baseline date" means major source baseline date or minor source baseline date and is established for each pollutant for which increments or other equivalent measures have been established if the area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7404(d)(1)(A)(ii) or (iii) for the pollutant on the date of the source's complete application; and

(a) For a major stationary source, the pollutant would be emitted in significant amounts; or
(b) For a major modification, there would be a significant net emissions increase of the pollutant.

(24) "Begin actual construction" means:
1. Initiation of physical or site construction activities that are of a permanent nature and include installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures.
2. For a change in method of operations, those on-site activities other than the preparatory activities, which mark the initiation of the other change.

(25) "Best available control technology" or "BACT" means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each regulated NSR pollutant that will be emitted from a proposed major stationary source or major modification that:
1. Is determined by the cabinet on a case-by-case basis after taking into account energy, environmental, and economic impacts and other costs, to be achievable by the source or modification through application of product processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant;
2. Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard of 40 C.F.R. Parts 60 and 61; and
3. Is satisfied by a design, equipment, work practice, or operational standard or combination of standards approved by the cabinet if:
   1. The cabinet determines technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible;
   2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice or operation; and
   3. The standard provides for compliance by means that achieve equivalent results.

(26) [448] "BOD" means biochemical oxidant demand.
(27) [477] "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.
(28) [146] "BTU" means British thermal unit.
(29) "Building, structure, facility, or installation" means all of the pollutant emitting activities that:
   (a) Belong to the same industrial grouping, having the same two (2) digit code, as described in the Standard Industrial Classification Manual, 1987;
   (b) Are located on one (1) or more contiguous or adjacent properties;
   (c) Are under the control of the same person or persons under common control; and
   (d) Do not include the activities of a vessel.
(30) [191] "C" means degree Celsius (centigrade).
(31) [201] "Cabinet" is defined in KRS 224.01-010(9).
(32) [241] "Cal" means calorie.
(33) [252] "Capital expenditure" means an expenditure for a physical or operational change to an affected facility that:
   (a) Exceeds the product of:
VOLUME 30, NUMBER 10 – April 1, 2004

1. The applicable "annual asset guidelines repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534; and
2. The affected facility's basis, as defined by 26 U.S.C. 1012; and
(b) Is not reduced by an excluded addition as defined in IRS Publication 534.

(34) ([23]) "cfm" means cubic feet per minute.

(35) ([24]) "CH₄" means methane.

(36) "Clean coal technology" means a technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity or process steam that was not in widespread use as of November 15, 1990.

(37) "Clean coal technology demonstration project" means a commercial demonstration of clean coal technology, with a federal contribution of at least twenty (20) percent of the total cost of the project and funding appropriated as follows:
(a) Under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000; or
(b) To the U.S. EPA for a similar project.

(38) "Clean unit" means an emissions unit that:
(a) Has been issued a major NSR permit that requires compliance with BACT or LAER; is complying with the applicable BACT or LAER requirements, and qualifies as a clean unit pursuant to 40 C.F.R. 51.1.17, Section 21 or 401 KAR 51:017, Section 21(2); or
(b) Has been designated by the cabinet as a clean unit, based on the criteria in 401 KAR 51:017, Section 21(2) or 401 KAR 51:052, Section 12(2), using a SIP approved permitting process; or
(c) Has been designated as a clean unit by the U.S. EPA in accordance with 40 C.F.R. 52.21(v)(3)(ii) to (iv).

(39) ([26]) "Clinker" means the product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(40) ([26]) "CO" means carbon monoxide.

(41) ([27]) "CO₂" means carbon dioxide.

(42) ([28]) "COD" means chemical oxidant demand.

(43) "Collateral pollutant" means an air contaminant for which the emissions rate is increased as a result of undertaking a pollution control project.

(44) ([29]) "Combined cycle system" means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.

(45) ([30]) "Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustion chamber, and a turbine, in which the fuel gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(46) ([31]) "Commence" means that an owner or operator;
(a) Has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility, or
(b) For construction of a major stationary source or major modification in the PSD or NSR program, has all necessary preconstruction approvals or permits, and:
1. Has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
2. Has entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(47) ([32]) "Commence commercial operation" means to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:
(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4,

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- 2178 -
such as control device secondary voltages and electric currents;
(b) Monitor other information such as gas flow rate, ozone or carbon dioxide concentrations; and
(c) Record average operational parameter values on a continuous basis.

(58) [600] "Control period" means:
(a) For the year 2004, the period beginning May 31, 2004, and ending September 30, 2004, inclusive; and
(b) For all other years, the period beginning May 1 of a year and ending September 30 of the same year, inclusive.

(59) [400] "Director" means Director of the Division for Air Quality of the [Natural Resources and Environmental and Public Protection Cabinet.

(60) [440] "District" is defined in KRS 224.01-010(11).

(61) [420] "dscm" means dry cubic feet at standard conditions.

(62) [440] "dscm" means dry cubic feet at standard conditions.

(63) [440] "Electric generating unit" means, for 401 KAR 51:180 to 401 KAR 51:195, a fossil fuel-fired boiler, combustion turbine, or a combined cycle system used to generate twenty-five (25) megawatts or more of electricity, some of which is offered for sale.

(64) "Electric utility steam generating unit" or "EUSGU" means, for the PSD and NSR programs, a steam electric generating unit that is constructed for the purpose of supplying for sale:
(a) More than one-third (1/3) of its potential electric output capacity;
(b) More than twenty-five (25) megawatt electrical output to a utility power distribution system for sale; and
(c) Steam to a steam-electric generator that would produce electrical energy is also considered in determining the electrical output capacity of the affected facility.

(65) [460] "Emission standard" means that numerical limit that [which] fixes the amount of an air contaminant or air contaminants that may be emitted into the atmosphere from an affected facility or from air pollution control equipment installed in an affected facility.

(66) [440] "Emissions unit" means any part of a stationary source including an EUSGU that emits or will have the potential to emit a regulated NSR. For 401 KAR 51:017 and 401 KAR 51:052, there are two (2) types of emissions units:
(a) A new emissions unit, which is any emissions unit that is or will be newly constructed and that has existed for less than two (2) years from the date the unit first operated and
(b) An existing emissions unit, which is any emissions unit that does not meet the requirements in paragraph (a) of this subsection or is a replacement unit.

(67) [460] "Enforceable as a practical matter" means that the emission or other standards contained in a permit or compliance schedule include:
(a) Technically accurate emission standards, and the portions of the source that are subject to the standards;
(b) A time period adequate to demonstrate compliance with the standards; and
(c) The method the source will use to achieve and demonstrate compliance with the limitations and standards, including appropriate monitoring, recordkeeping, and reporting.

(68) [470] "Equivalent method" means a method of sampling and analyzing for an air pollutant that [which] has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(69) [480] "Excess NOx emissions" means any tonnage of nitrogen oxides emitted by a NOx budget unit during a control period that exceeds the NOx budget emissions limitation for the unit.

(70) [440] "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(71) [500] "Existing source" means a source that [which] is not a new source.

(72) [520] "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(73) [520] "F" means degree Fahrenheit.

(74) "Federal land manager" means, for any lands in the United States, the secretary of the department with authority over those lands.

(75) "Federally enforceable" means all limitations and conditions that are enforceable by the U.S. EPA, including:
(a) Requirements developed under 40 C.F.R. Parts 60 and 61;
(b) Requirements in the Kentucky state implementation plan (SIP) approved by the U.S. EPA; and
(c) Any permit requirements established under 40 C.F.R. 52.21 or under regulations approved under 40 C.F.R. Part 51, Subpart I, including operating permits issued under an EPA-approved program incorporated into the SIP, which expressly requires adherence to a permit issued under the program.

(76) [630] "Federally-enforceable permit" means a permit issued under 401 KAR 52:020 or 401 KAR 52:030, as appropriate.

(77) [640] "Fixed capital cost" means the capital needed to provide all the depreciable components.

(78) [660] "Fossil fuel" means natural gas, petroleum, coal, or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

(79) [660] "Fossil fuel fired" means, for a unit:
(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combustion comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or
(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be fossil fuel fired as of the date during the year the unit begins combustng fossil fuel.

(80) [670] "ft" means feet or foot.

(81) [660] "Fuel" means natural gas, petroleum, coal, wood, or a form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(82) [690] "Fugitive emissions" means those emissions that [which] could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(83) [690] "g" means gram.

(84) [660] "gal" means gallon.

(85) [660] "General fund" is defined in KRS 48.010(13)(a).

(86) [660] "Generator" means a device that produces electricity.

(87) [640] "gr" means grain.

(88) [660] "HCl" means hydrochloric acid.

(89) [660] "Heat input" means the product, [in MBTUs per unit of time, (j) of the gross caloric value of the fuel, [in BTU per lb, (j)] and the fuel feed rate into a combustion device, [(in mass of fuel per unit of time, (j)] that:
(a) Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources; and
(b) Is measured, recorded, and reported to the cabinet by the NOx authorized account representative in accordance with 40 C.F.R. 96.70 to 96.76.

(90) [670] "HF means hydrogen fluoride.

(91) [670] "Hg" means mercury.

(92) [670] "HCl" means hydrochloric acid.

(93) [660] "hr" means hour.

(94) [670] "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(95) "Hydrocarbon combustion flare" means:
(a) A flare used to comply with an applicable New Source Performance Standard (NSPS) or Maximum Achievable Control Technology (MACT) standard, including uses of flares during startup, shutdown, or malfunction permitted under the standard; or
(b) A flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 µg/dscm hydrogen sulfide.

(96) [730] "H2O" means water.

(97) [730] "H2S" means hydrogen sulfide.

(98) [730] "H2SO4 means sulfuric acid.

(99) [740] "in" means inch.
(100) (765) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(101) (766) "Industrial boiler or turbine" means a fossil fuel-fired boiler, combustion turbine, or a combined cycle system having a maximum design heat input of 250 MMBTU per hour or more that is not an electric generating unit.

(102) "Innovative control technology" means a system of air pollution control that has not been adequately demonstrated in practice, but will have a substantial likelihood of achieving:

(a) Greater continuous emissions reduction than any control system in current practice; or

(b) At least comparable reductions at lower cost in terms of energy, economic, or nonair quality environmental impacts.

(103) "Particulate matter emissions" means emissions of particulate matter into the open air from a process that [which] operates for less than any six (6) consecutive minutes.

(104) (789) "J" means joule.

(105) (790) "Kg" means kilogram.

(106) (860) "L" means liter.

(107) (841) "lb" means pound.

(108) "Legally enforceable" means the cabinet or the U.S. EPA has the authority to enforce a certain restriction.

(109) (832) "Long dry kiln" means a kiln that employs no preheating of the feed and has a dry inlet feed.

(110) (833) "Long wet kiln" means a kiln that employs no preheating of the feed and the inlet feed to the kiln is a slurry.

(111) "Low terrain" means an area other than high terrain.

(112) "Long achievable emissions rate" or "LAEIR" means, for any source, the more stringent rate of emissions based on:

(a) The most stringent emissions limitation that is contained in the Kentucky SIP for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable; or

(b) The most stringent emissions limitation that is achieved in practice in the class or category of stationary sources.

1. If this limitation is applied to a modified application, this is the lowest achievable emissions rate for the new or modified emissions units at the stationary source.

2. The application of this term does not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(113) (841) "m" means meter.

(114) (865) "m" means cubic meter.

(115) "Major emissions unit" means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of a PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas.

(116) "Major modification" means a physical change in or a change in the method of operation of a major stationary source that would result in a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant.

(a) A significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds is considered significant for ozone.

(b) A physical change or change in the method of operation does not include:

1. Routine maintenance, repair and replacement;

2. Use of alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source that:

   a. The source was capable of accommodating before January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052; unless the change would be prohibited under a federally enforceable permit condition that was established after January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052, pursuant to 40 C.F.R. 51.165 or 51.166; or

   b. The source is approved to use under a permit issued pursuant to 401 KAR 51:017 or 401 KAR 51:052;

5. An increase in the hours of operation or in the production rate, unless the change is prohibited under any federally enforceable permit condition established after January 6, 1975, for 401 KAR 51:017 or December 21, 1976, for 401 KAR 51:052; pursuant to 40 C.F.R. 52.21; after June 6, 1975; pursuant to 401 KAR 51:015; after September 22, 1982, pursuant to 401 KAR 51:017; or under 401 KAR 52:20 and 401 KAR 51:0165;

6. A change in ownership at a stationary source;

7. The addition, replacement or use of a pollution control project at an existing emissions unit meeting the requirements of 401 KAR 51:017, Section 22 or 441 KAR 51:052, Section 13, as applicable;

8. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

9. The installation or operation of a permanent clean coal technology demonstration project that constitutes recovering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit, on a pollutant-by-pollutant basis; or

10. The reactivation of a very clean coal-fired electric utility steam generating unit.

(117) "Major NSR permit" means a permit issued under Kentucky's PSD or NSR program.

(118) (886) "Major source" means a source of an air pollutant with a [which-the] potential emission rate [is] equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, or carbon monoxide, or CO.

(119) "Major source baseline date" means:

(a) For particulate matter and sulfur dioxide, January 6, 1975;

and

(b) For nitrogen dioxide, February 8, 1988,

(120) (a) "Major stationary source" means:

1. A stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant;

2. For the PSD program, any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants with thermal dryers, Kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of generating more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers, or combination of fossil fuel boilers, totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, tronite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. Notwithstanding the stationary source size specified in subparagraph 1b of this paragraph, a stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

3. Any physical change that will occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change will constitute a major stationary source by itself;

(b) A major stationary source that is major for volatile organic compounds is considered major for ozone.

(c) The fugitive emissions of a stationary source are not included in determining if the source is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:
1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; and
27. Any stationary source category that, as of August 7, 1980,
is being regulated under 42 U.S.C. 7411 or 7412.

(a) "Malfunction" means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that could have been reasonably prevented.

(b) "Mandatory Class I area" means an area identified in 40 C.F.R. 51. Subpart D, if the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined eligibility to be an important area.

(c) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(d) "Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(e) "Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input and is:
   (a) A value calculated according to 40 C.F.R. Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 C.F.R. Part 75, Appendix D in reporting heat input; or
   (b) A value reported according to 40 C.F.R. Part 75 using the maximum potential flow rate and either the maximum percent CO2 concentration (in percent CO2) or the minimum percent O2, if the unit intends to use a flow monitor and a dilute gas monitor.

(f) "Maximum potential NOx emission rate" means the emission rate of NOx (in lb per MMBTU) calculated according to 40 C.F.R. 75, Appendix F, Section 3, using the maximum potential NOx concentration as defined in 40 C.F.R. 75, Appendix A, Section 2, and the maximum percent O2 or the minimum percent CO2 under all operating conditions of the unit except for unit startup, shutdown, and malfunction.

(g) "Maximum rated hourly heat input" means a unit specific maximum hourly heat input (MMBTU) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(h) "Mid-kiln firing" means the secondary firing in kilns by injecting solid fuel at an intermediate point in the kiln using a specially designed feed injection mechanism for the purpose of decreasing NOx emissions through:
   (a) Burning part of the fuel at a lower temperature; and
   (b) Reducing-conditions at the solid waste injection point that may destroy some of the NOx formed upstream in the kiln burning zone.

(129) [604] "mm" means minute.

(a) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 C.F.R. 52.21 or to regulations approved under 40 C.F.R. 51.168 submits a complete application under the relevant regulations.

1. For particulate matter and sulfur dioxide, the trigger date is August 7, 1977; and
2. [For nitrogen dioxide, the trigger date is February 8, 1988.]

(b) A minor source baseline date established originally for the TSP increments remains in effect to determine the amount of available PM10 increments, except that the cabinet may rescind the minor source baseline date if it is shown, to the satisfaction of the cabinet, that the emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM10 emissions.

(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:
   1. The area in which the proposed source or modification will be located is designated as an attainment or unclassifiable pursuant to 42 U.S.C. 7404(d)(1)(A)(i) or (ii) or (iii) for the pollutant on the date of its complete application under the relevant regulations; and
   2. For a major stationary source, the pollutant will be emitted in significant amounts or a significant net emissions increase of the pollutant will occur for a major modification.

(d) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment for the one (1) hour national ambient air quality standard for ozone in 401 KAR 51:010.

(e) "Modification" means a physical change in, or a change in the method of operation of, an affected facility that:
   (a) Increases the amount of a regulated air pollutant [to which a standard applies] emitted into the atmosphere by that facility or that which results in the emission of a regulated air pollutant into the atmosphere not previously emitted; and
   (b) Is not solely:
      1. Maintenance, repair, or replacement that the cabinet determines to be routine for a source category;
      2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;
      3. An increase in the hours of operation;
      4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility is [shall-be] considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change; and
      5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

(f) The addition or use of a system or device whose primary function is the reduction of air pollutants, unless an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial or:
7. The relocation or change in ownership of a source.

(g) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record [if applicable] process parameters.

(h) "Monitoring system" means a monitoring system that meets the requirements of 40 C.F.R. Part 96.
"MWe" means megawatt electrical.

"N" means nitrogen.

"Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time if not restricted by seasonal or other deratings as measured with United States Department of Energy standards.

"Natural conditions" means those naturally-occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

"Necessary preconstruction approvals or permits" means those permits or approvals required under the administrative regulations approved by the Kentucky SIP and federal air quality control laws and regulations.

"Net emissions increase" means, for any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:

1. An increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to 401 KAR 51:017, Section 1(d) or 401 KAR 51:052, Section 1(c); and
2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:

1. For construction that commences prior to January 6, 2002, the change occurs between the date ten (10) years before construction on the change commences, and the date that the increase from the change occurs; and
2. For construction that commences on and after January 6, 2002, the change occurs between the date five (5) years before construction on the change commences, and the date that the increase from the change occurs.

(c) An increase or decrease in actual emissions is creditable only if:

1. The applicant or the U.S. EPA has not relied on the change in issuing a permit for the source pursuant to 401 KAR 51:017, 401 KAR 51:052, or 40 C.F.R. 52:21;
2. The permit is in effect at the time the increase or decrease in actual emissions at the particular change occurs; and
3. The increase or decrease in emissions did not occur at a clean unit, except as provided in 401 KAR 51:017, Sections 20(7) or 21(9) or 401 KAR 51:052, Sections 11(7) or 12(9).

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the maximum allowable increases remaining available. For particulate matter, only PM10 emissions are used to evaluate the net emissions increase for PM10.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
2. The decrease is enforceable as a practical matter at and after the time that actual construction on the particular change begins;
3. The decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and
4. The decrease did not result from the installation of add-on control technology or application of prevention practices that were relied on in designating an emissions unit as a clean unit under 40 C.F.R. 52:21(v) or under administrative regulation approved pursuant to 40 C.F.R. 51.166(u) or 51.165(d).

(g) An increase that results from a physical change at a source occurs if the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shut down becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(h) The term, actual emissions, as defined in subsection (2) of this section does not apply in determining creditable increases and decreases.

"New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation, irrespective of a change in emission rate.

"Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

"ni" means nanograms.

"NO" means nitrogen oxide.

"NOX" means nitrogen dioxide.

"Nonattainment major new source review program" or "NSR program" means a major source preconstruction permit program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.165 and 40 C.F.R. Part 51, Appendix E.

"NOX allocation" means an authorization to emit one (1) ton of NOX during a control period under the NOX Budget Trading Program.

"NOX Allowance Tracking System (NATS)" means the system by which the U.S. EPA records allocations, deductions, and transfers of NOX allowances under the NOX Budget Trading Program.

"NOX authorized account representative" means the natural person who is authorized by the owner or operator to:

(a) Represent and legally bind the owner and operator in all matters pertaining to the NOX Budget Trading Program in accordance with 40 C.F.R. 96, Subpart B for a NOX budget source and all NOX budget units at the source; and
(b) Transfer or otherwise dispose of NOX allowances held in the general account in accordance with 40 C.F.R. 96, Subpart F, for a general account.

"NOX budget limitations" means, for a NOX budget unit, the tonnage equivalent of the NOX allowances available for compliance deduction for the unit and for a control period under 401 KAR 51:160 adjusted by deductions of sufficient NOX allowances to account for:

(a) Actual utilization under 40 C.F.R. 96.42(e) for the control period;
(b) Excess NOX emissions for a prior control period under 40 C.F.R. 96.54(d);
(c) Withdrawal from the NOX budget program under 40 C.F.R. 96.88;
(d) A change in regulatory status for a NOX budget opt-in source under 40 C.F.R. 96.87.

"NOX budget opt-in source" means an affected facility that has elected to become a NOX budget unit under the NOX Budget Trading Program and whose NOX budget opt-in permit has been issued and is in effect.

"NOX budget source" means a source that includes one (1) or more NOX budget units.

"NOX Budget Trading Program" means the multi-state NOX air pollution control and emission reduction program established and administered by the U.S. EPA under 40 C.F.R. 51.121 or 52.34, as a means of mitigating the interstate transport of O3, O3 precursors, and NOx.

"NOX budget unit" means a unit that is subject to the NOX Budget Trading Program limitations under 401 KAR 51:160 or 40 C.F.R. 96.85.

"NOX budget unit operator" means a person who operates, controls, or supervises a NOX budget unit, a NOX budget source, or a unit for which an application for a NOX budget opt-in permit under 401 KAR 51:155 is submitted and not denied or withdrawn and includes a holding company, utility system, or plant manager of a NOX budget unit or source.

"NOX budget unit owner" means:

(a) A holder of a portion of the legal or equitable title in a NOX budget unit or in a unit for which an application for a NOX budget opt-in permit under 401 KAR 51:155 is submitted and not denied or withdrawn;
light, that are able to catalyze the destruction of stratospheric ozone. (175) “PAL effective date” means:
(a) The date of issuance of the PAL permit or (176) “PAL, effective period” means the period beginning with
(b) For an increased PAL the date any emissions unit that is the PAL effective date and ending ten (10) years later.
part of the PAL major modification becomes operational and begins (177) “PAL major modification” means any physical change in
to emit the PAL pollutant. or a change in the method of operation of the PAL source that (178) “PAL permit” means the permit issued by the cabinet that
causes it to emit the PAL pollutant at a level equal to or greater than establishes a PAL for a major stationary source.
the PAL. (179) “PAL pollutant” means the pollutant for which a PAL is established at a major stationary source.
(180) [433] “Particulate matter” means a material, except (181) [434] “Particulate matter emissions” means, except as uncombined water that is which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.
used in 40 C.F.R. 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan. (182) [435] “Peak load” means the maximum instantaneous operating load.
(183) [436] “Permitted capacity factor” means the annual permitted fuel use divided by the manufacturer specified maximum fueled by 8,780 hours per year. (184) [437] “Person” is defined by KRS 224.01-100(17).
(185) [438] “Plant-wide applicability limitation” or “PAL” means an (186) “Plant-wide applicability limitation” or “PAL” means an emission limitation, expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and is established source-wide in accordance with 401 KAR 51:017, Section 23 or 401 KAR 51:052, Section 14.
(187) [439] “PMq0” emissions means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers by an applicable reference method, or an equivalent or alternative method, specified in 40 C.F.R. Chapter I, or by a test method specified in the approved state implementation plan.
(188) “Pollution control project” or “P0C” means an activity, set of work practices, or project, including pollution prevention, undertaken at an existing emissions unit that reduces emissions of air pollutants from that unit in accordance with 401 KAR 51:017, Section 22 or 401 KAR 51:052, Section 13. Qualifying activities or projects include:
(a) Conventional or advanced flue gas desulfurization or sorbent injection for control of SO2;
(b) Electrostatic precipitators, baghouses, high efficiency multi-cyclones, or scrubbers for control of particulate matter or other pollutants;
(c) Flue gas recirculation, low-NOx burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion for internal combustion (IC) engines, and oxidation-absorption catalyst for control of NOx;
(d) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biotreatment, absorbers and scrubbers, and floating roofs for storage vessels for control of VOCs or HAPs;
(e) An activity or project to accommodate switching, or partially switching, to an inherently less polluting fuel, to be limited to the following:

1. Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to five one-hundredths (0.05) percent sulfur diesel.
2. Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;
3. Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of unclean wood;
4. Switching from coal to #2 fuel oil with a five-tenths (0.5) percent maximum sulfur content; and
5. Switching from high sulfur coal to low sulfur coal with a maximum one and two-tenths (1.2) percent sulfur content; and (d) Activities or projects undertaken to accommodate switching from the use of one (1) ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate an activity or project described in subparagraphs 1 and 2 of this paragraph.

1. The productive capacity of the equipment is not increased as a result of the activity or project; and
2. The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS, determined by:
   a. Determining the ODP of the substances by consulting 40 C.F.R. Part 82, Subpart A, Appendices A and B;
   b. Calculating the replaced ODP-weighted amount by multiplying the baseline actual usage, using the annualized average of any twenty-four (24) consecutive months of usage within the past ten (10) years, by the ODP of the replaced ODS;
   c. Calculating the projected ODP-weighted amount by multiplying the projected annual usage of the new substance by its ODP; and
   d. If the value calculated in clause b of this subparagraph is more than the value calculated in clause c of this subparagraph, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

189 [1446] "Potable cement kiln" means a system, including solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

190 [1446] "Potential to emit" or "PTE" means:
(a) The maximum capacity of a stationary source to emit a regulated air pollutant given its physical and operational design, where:
1. [(a)(i)] A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed is (shall be) treated as part of its design if the limitation is enforceable as a practical matter; and
2. [(b)] This definition does not alter or affect the use of this term for other purposes of the Act or the term "capacity factor" as used in the Acid Rain Program.
(b) For the PSD and NSR programs, the maximum capacity of a stationary source to emit an air pollutant under its physical or operational design, where:
1. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation or the effect it would have on emissions:
   a. Is federally enforceable; or
   b. For an actual PAL is federally enforceable or enforceable as a practical matter; and
2. Secondary emissions are not counted.

193 [(1443)] "ppm" means parts per billion.
194 [(1444)] "ppm" means parts per million.

195 [(1446)] "ppm(wt/wt)" means parts per million (weight by weight).

196 [(1446)] "Precaliner kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln that [which] forms clinker.

197 "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters, such as control device secondary voltages and electric currents, and other information, such as gas flow rate, ozone or carbon dioxide concentrations, and to calculate and record the mass emissions rate on a continuous basis.

198 [(1447)] "Preheater kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln that [which] forms clinker.

199 "Prevention of Significant Deterioration Program" or "PSD Program" means a major source preconstruction program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.196 or 52.21.

200 "Primary pollutant" means a regulated NSR pollutant for which a pollution control project is undertaken to reduce emissions of that pollutant.

201 "Project" means a physical change or change in method of operation of an existing major stationary source.

202 "Projected actual emissions" means:
(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five (5) years, in a twelve (12) month period, following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if
   1. The project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; and
   2. Full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.
(b) To determine projected actual emissions, before beginning actual construction, the owner or operator of major stationary source:
1. Considers all relevant information, including historical operational data and the company's own representations of expected and highest projected business activity; filings with the cabinet and the U.S. EPA; and compliance plans under the Kentucky SIP;
2. Includes fugitive emissions and emissions associated with startups, shutdowns, and malfunctions; and
3. Excludes, in calculating any increase in emissions that results from a project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the project, including any increased utilization due to product demand growth or
   2. Elects to use the emissions unit's potential to emit, in tons per year, instead of using subparagraph 1 of this paragraph to determine projected actual emissions.

203 [(1446)] "psia" means pounds per square inch absolute.
204 [(1449)] "psig" means pounds per square inch gage.
205 RACT/RACT/RAI Clearinghouse or "RBLC" means a collection of RACT/RACT/RAI technologies maintained online by the U.S. EPA.

206 "Regeneration of a very clean coal-fired EUFG" means a physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:
(a) Has not been in operation for the two (2) year period between November 15, 1986, and November 15, 1988, and the emissions from that unit continue to be carried in the Kentucky emissions inventory after November 15, 1990; and
(b) Was equipped prior to shutdown with a continuous system of emissions control achieving a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency
for particulates of no less than ninety-eight (98) percent; and
(c) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and
(d) Is otherwise in compliance with the requirements of 42 U.S.C. § 7401 to § 7471q.
(207) "Reasonable further progress" means annual incremental reductions in emissions of the relevant air pollutant as required by 42 U.S.C. § 7501 to § 7515 or may reasonably be required by the U.S. EPA for the purpose of ensuring the attainment of the applicable ambient air quality standard by the applicable date specified.
(208) "Reconstruction" means the replacement of components of an existing affected facility to the extent that:
(a) The fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility; and
(b) It is technologically and economically feasible to meet the applicable requirements of 401 KAR Chapters 50 to 65.
(209) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by 40 C.F.R. §§ 50, Appendix A to § 50, 40 C.F.R. §§ 50, Appendices A and B; and 40 C.F.R. § 61, Appendix B.
(210) "Regulated NSR pollutant" means the following:
(a) A pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursor for such pollutants identified by the U.S. EPA; (b) A pollutant that is subject to any standard promulgated under 41 U.S.C. § 7411;
(c) A pollutant that is subject to a standard promulgated under or established by 42 U.S.C. §§ 7671 to § 7671q; or
(d) A pollutant that otherwise is subject to regulation under 42 U.S.C. § 7401 to § 7471q, except that any hazardous air pollutant (HAP) listed in 42 U.S.C. § 7412 or added to the list pursuant to 42 U.S.C. § 7412(b)(3), is not a regulated NSR pollutant unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under 42 U.S.C. § 7408.
(211) "Replacement unit" means an emissions unit that does not generate creditable emissions reductions by shutting down the existing emissions unit that is replaced, and that:
1. Is a reconstructed unit within the meaning of 40 C.F.R. § 51.15(b) or that completely takes the place of an existing emissions unit;
2. Is identical to or functionally equivalent to the replaced emissions unit; and
3. Does not alter the basic design parameters of the process unit.
(b) Replaces a unit that:
1. Is permanently removed from the major stationary source, is otherwise permanently disabled, or is prohibited from operating by a permit that is enforceable as a practical matter; and
2. If brought back into operation, is considered a new emissions unit.
(212)(a) "Repowering" means:
1. Replacement of an existing coal-fired boiler with one (1) of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetofluiddynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the U.S. EPA in consultation with the Secretary of Energy, a derivative of one (1) or more of these technologies, or another technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; and
2. An oil or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Department of Energy.
(b) A permit application from a source that satisfies this definition shall receive expedited consideration by the cabinet and is granted an extension under 42 U.S.C. § 7651b.
(213) "Responsible official" means:
(a) For a corporation: 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 a duly-authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and
1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25,000,000 in second quarter 1980 dollars; or
2. The delegation of authority to the representative is approved in advance by the cabinet;
(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;
(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. The principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or
(d) For the acid rain portion of a permit for an affected source, the designated representative.
(214) (a) "Run" means the net period of time, either intermittent or continuous, within the limits of good engineering practice during which an emission sample is collected.
(b) The "S" means at standard conditions.
(c) "sec" means second.
(d) "Secondary emissions" means emissions that:
1. Occur as a result of the construction or operation of a major stationary source or major modification; and
2. Do not come from the major stationary source or major modification itself;
(e) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification that [which] caused the secondary emissions; and
(f) Include emissions from an offsite support facility that [which] would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and
(g) Do [does] not include emissions that [which] come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or vessel.
(215) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment for the one (1) hour national ambient air quality standard for ozone in 431 KAR 51:010.
(216) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment for the one (1) hour national ambient air quality standard for ozone in 431 KAR 51:010.
(217) "Shutdown" means the cessation of an operation.
(218) "Significant" means:
(a) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a site of emissions that would equal or exceed a corresponding rate listed in the table:

<table>
<thead>
<tr>
<th>POLLUTANT</th>
<th>EMISSIONS RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbon monoxide</td>
<td>100 lbs per year (ton)</td>
</tr>
<tr>
<td>Ozone depleting substance</td>
<td>150 lpy</td>
</tr>
<tr>
<td>Nitrogen oxides</td>
<td>40 lpy</td>
</tr>
<tr>
<td>Sulfur dioxide</td>
<td>40 lpy</td>
</tr>
<tr>
<td>Particulate matter</td>
<td>25 lpy/Pm10 emissions</td>
</tr>
<tr>
<td>Ozone</td>
<td>40 lpy volatile organic compounds</td>
</tr>
<tr>
<td>Lead</td>
<td>0.6 lpy</td>
</tr>
<tr>
<td>Asbestos</td>
<td>0.007 lpy</td>
</tr>
<tr>
<td>Beryllium</td>
<td>0.0004 lpy</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.1 lpy</td>
</tr>
<tr>
<td>Vinyl chloride</td>
<td>1 lpy</td>
</tr>
<tr>
<td>Fluorides</td>
<td>3 lpy</td>
</tr>
</tbody>
</table>
Sulfuric acid mist 7 tpy
Hydrogen sulfide (H₂S) 10 tpy
Total reduced sulfur (including H₂S) 10 tpy
Reduced sulfur compounds (including H₂S) 10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo- p-dioxins and dibenzofurans) 3.2 x 10^5 megagrams per year (Mg/yr) (3.5 x 10^4 tpy)
Municipal waste combustor metals (measured as particulate matter) 14 Mg/yr (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride) 36 Mg/yr (40 tpy)

(b) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in the table in paragraph (a) of this subsection, any emissions rate.

(c) For 401 KAR 51:017, in reference to an emissions rate or a net emissions increase associated with a major stationary source or major modification, which is to be constructed within ten (10) kilometers of a Class I area, an impact on that area equal to or greater than one (1) mg/m³ over a twenty-four (24) hour average.

(d) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

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</tr>
</thead>
<tbody>
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<td>100 tons per year (tpy)</td>
</tr>
<tr>
<td>Ozone depleting substance</td>
<td>100 tpy</td>
</tr>
<tr>
<td>Nitrogen oxides</td>
<td>40 tpy</td>
</tr>
<tr>
<td>Sulfur dioxide</td>
<td>40 tpy</td>
</tr>
<tr>
<td>Ozone</td>
<td>40 tpy of volatile organic compounds</td>
</tr>
<tr>
<td>Lead</td>
<td>0.6 tpy</td>
</tr>
</tbody>
</table>

222) Significant emissions increase means, for a regulated NSR pollutant, an increase in emissions that is equal to or greater than the emission level that is significant for that pollutant.

223) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the applicable significant level as defined in subsection 221 of this section or in 42 U.S.C. 7401 to 7671g, whichever is lower for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

224) Small emissions unit means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the PAL pollutant's applicable significant level as defined in subsection 220 of this section or in 42 U.S.C. 7401 to 7671g, whichever is lower.

225) 1469) SO₂ means sulfur dioxide.

226) 1469) Source means one (1) or more affected facilities contained within a given contiguous property line, which means the property is separated only by a public thoroughfare, stream, or other right of way.

227) 1464) SQ means square.

228) 1462) Stack or chimney means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

229) 1469) Standard means an emission standard, a standard of performance, or an ambient air quality standard as promulgated in 401 KAR Chapters 50 to 65, including the emission control requirements necessary to comply with 401 KAR Chapter 51.

230) 1464) Standard conditions:

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg)

(b) For the purposes of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

231) 1466) Start-up means the setting in operation of an affected facility.

232) 1469) "State implementation plan" or "SIP" means the most recently prepared plan or revision required by 42 U.S.C. 7410 that [which] has been approved by the U.S. EPA.

233) 1469) "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

234) 1464) "Submit" means to send or transmit a document, information, or correspondence in accordance with an applicable requirement.

235) 1468) "TAPPI" means Technical Association of the Pulp and Paper Industry.

236) "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less and that complies with the Kentucky SIP and with other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

237) 1469) "Ton" or "tonnage" means, for a NOx budget source, a short ton or (92,000 pounds).

238) 1469) "Total suspended particulates" or "TSP" means particulate matter as measured by the method described in 40 C.F.R. 50, Appendix B.

239) 1471) "tpy" means tons per year.

240) 1472) "TSS" means total suspended solids.

241) 1473) "Uncombined water" means water that [which] can be separated from a compound by ordinary physical means and that [which] is not bound to a compound by internal molecular forces.

242) 1474) "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

243) 1475) "Urban county" means a county that [which] is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county [shall be] classified as urban for [with respect to] the administrative regulations of the Division for Air Quality.

244) 1476) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

245) 1477) "U.S. EPA" means the United States Environmental Protection Agency.

246) 1476) "UTM" means Universal Transverse Mercator.

247) 1476) "Visibility impairment" means a humanly perceptible change in visibility such as visual range, contrast, or coloration from that which would have existed under natural conditions.

248) 1479) "Volatility organic compound" or "VOC" means an organic compound that participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trichlorofluoromethane (HFC-23); 1,1,2,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HFC-141b); 1-chloro-1,1-difluoroethane (HFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HFC-124); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-difluoroethane (HFC-152a); paraldehyde; benzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated silicones; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,2,2-pentafluoro propane (HFC-225ca); 1,1,1,2,2,3-pentafluoropropane (HFC-225cb); 1,1,2,2,3,3,3-heptfluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoro propane (HFC-245ca); 1,1,2,3,3-
pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mcf); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoro-ethane (HCFC-123a); (CF₃)₂CFOH; 2-difluoromethoxy-methyl chloride (C₂F₅OCH₂F); 1,1,1,2,3,3,3-heptafluoropropane(CF₅)₂CCF₂OCH₂; 1-ethoxy-1,2,2,3,3,4,4,4-nonachloro-fluorobutane(C₆F₁₃OC₆H₄); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane(CF₃)₂CCF₂OCH₂; methyl acetate; and perfluorocarbon compounds which fall into the following classes:
(a) Cyclic, branched, or linear, completely fluorinated alkanes;
(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations;
(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine; or
(e) Other compounds that have negligible photochemical reactivity and which are inadvertently measured by test methods that have been approved by the U.S. EPA.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget;


(2) The documents incorporated by reference in subsection (1) of this section are available for public inspection and copying (subject to copyright law) at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:
(a) Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403, (502) 573-3382;
(b) Ashland Regional Office, 1550 Woolanh Drive, Suite 1, Ashland, Kentucky 41102, (606) 329-5225;
(c) Bowling Green Regional Office, 1609 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-1741;
(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 625-4923;
(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;
(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 879-0167;
(g) Owensboro Regional Office, 3032 Alvey Park Drive, W, Suite 700, Owensboro, Kentucky 42303, (270) 677-7304;
(h) Paducah Regional Office, 4500 Clark River Road, Paducah, Kentucky 42003, (270) 888-8468; and
(i) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 584-3358.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 12, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 30, 2004, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 23, 2004, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation.

A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 3, 2004. Send written notification of intent to be heard at the hearing or written comments on the proposed administrative regulation to the contact person. 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: Millie Ellis, Environmental Technologist III, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis
(1) Provide a brief summary of:
(a) What this administrative regulation does: The administrative regulation provides the definitions of terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 51.
(b) The necessity of this administrative regulation: The administrative regulation defines the terms used in Kentucky administrative regulations contained in 401 KAR Chapter 51.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation that have federal definitions have been clarified and simplified and have been formatted to conform to KRS Chapter 13A drafting requirements, but are not more stringent or otherwise different than the corresponding federal definitions.

How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation provides the definitions of terms used in the Kentucky administrative regulations contained in 401 KAR Chapter 51.

(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 adds the definitions of terms used in the Kentucky administrative regulations implementing the revision to the federal Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) regulations, which is found in pertinent part at 40 C.F.R. 51.165 and 51.166 as amended at 65 Fed. Reg. 80186 (December 31, 2002) and at 66 Fed. Reg. 50321 (November 7, 2001). The amendment also proposes revisions to make the administrative regulation conform to KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order for the cabinet to ensure the Kentucky State Implementation Plan (SIP) continues to meet the requirements of the federal mandate for major sources constructing and modifying in the Commonwealth. The amendment will add the definitions of terms used in 401 KAR 51:017 and 401 KAR 51:052, which are being amended in a separate action to implement the revisions to the federal Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) regulations promulgated in the Federal Register, 67 FR 80185 (December 31, 2002) and at 68 FR 63021 (November 7, 2003). This administrative regulation is also being amended in order for the administrative regulation to conform to KRS Chapter 13A drafting requirements.
(c) How the amendment conforms to the content of the authorizing statutes: The definitions contained in this administrative regulation that have federal definitions have been clarified and simplified but are not more stringent or otherwise different than the corresponding federal definitions.
(d) How the amendment will assist in the effective administration of statutes: The amendment to the administrative regulation will provide the definitions of terms used in 401 KAR 51:017 and 401 KAR 51:052, which are being amended in a separate action, to implement the revisions to the federal Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review.
(NSR) regulations promulgated in the Federal Register, 67 FR 80185 (December 31, 2002) and at 68 FR 63021 (November 7, 2003).

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation does not directly impact any individual, business, organization, or state or local government. This administrative regulation merely defines the terms used in administrative regulations contained in 401 KAR Chapter 51.

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 does not directly impact any individual, business, organization, or state or local government. This administrative regulation merely defines the terms used in administrative regulations contained in 401 KAR Chapter 51.

5. Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: Since this administrative regulation merely defines terms used in other administrative regulations contained in 401 KAR Chapter 51, there are no known initial costs for implementation of this administrative regulation.
   (b) On a continuing basis: Since this administrative regulation merely defines terms used in other administrative regulations contained in 401 KAR Chapter 51, there are no known continuing costs related to this administrative regulation.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No new revenue is required because there are no known costs related to 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 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. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

9. TIERING: is tiering applied? Tiering is not applied. The proposed administrative regulation imposes no requirements; therefore, tiering is not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No.

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any known aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

   Revenues (+/-): There is no known effect on current revenues.

   Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 51:017. Prevention of significant deterioration of air quality.

RELATES TO: KRS 224.10-100, 40 C.F.R. 51 Subpart I, Appendix S, Section IV, Part 51, Appendix IV, 51.166, 52.21, Part 58, Appendix B, 60, 61, 63, 81.318, 81 Subpart D, 42 U.S.C. 7401-7671q (Clean Air Act), 4321-4370d (National Environmental Policy Act)

STATUTORY AUTHORITY: KRS 224.10-100, 40 C.F.R. 51.166, 52.21, 42 U.S.C. 7401-7671q (Clean Air Act) NECESSIT Y, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [Natural Resources and Environmental and Public Protection Cabinet to promulgate (prescribe) administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation provides for the prevention of significant deterioration of ambient air quality. The provisions of this administrative regulation are not different nor more stringent than the federal regulation, 40 C.F.R. 51.166.]

Section 1. [Definitions. Terms not defined in this section shall have the meaning given them in 401 KAR 51:001:]

1. "Actual emissions": means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with paragraphs (b) to (d) of this subsection.

2. Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the two (2)-year period which precedes the particular date and is representative of normal-source operation. The cabinet may allow the use of a different time period upon a determination that it is more representative of normal-source operation.

   Actual emissions shall be calculated using the unit's actual operating years—production rate, types of materials processed, stored, or combusted during the selected time period.

3. The cabinet may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

   (d) For an emissions unit (other than an electric utility steam generating unit) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

4. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit following the physical or operational change, if the source owner or operator maintains and submits to the cabinet on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the cabinet if it determines that period to be more representative of normal-source postchange operations.

5. "Adverse impact on visibility": means visibility impairment which interferes with the management, protection, preservation, and enjoyment of the visitor's visual experience of the Class I area. This determination shall be made on a case-by-case basis and shall consider the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with the times of visitor use of the Class I area, and the frequency and timing of natural conditions that reduce visibility.

6. "Allowable emissions": means the emissions rate of a stationary source which is calculated using the maximum rated capacity of the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

   (a) The applicable standards in Titles 401, KAR Chapters 57, 50, 60, and 63, or 40 C.F.R. 50, 61, and 63;

   (b) The applicable state or federally approved regulatory emissions limitation, including those with a future compliance date; or

   (c) The emissions rate specified as a state or federally enforceable permit condition, including those with a future compliance date.

7. "Baseline area": means an intrastate area (and every part of that area designated as attainment or unclassifiable pursuant to 42 U.S.C. 7404(d)(1)(A)(ii) or (iii) (Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act), in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1)
VOLUME 30, NUMBER 10 – April 1, 2004

ug/m³ (annual average) of the pollutant for which the minor source baseline date is established. Area redesignations under 42 U.S.C. 7404(d)(1)(A)(ii) or (iii) [Section 107(6)(d)(1)(A)(ii) or (iii) of the Clean Air Act], cannot intersect or be smaller than the area of impact of a major stationary source or major modification which
1. Establishes the minor source baseline date; or
2. Is subject to this administrative regulation, and would be constructed in the Commonwealth of Kentucky.

(b) A baseline area established originally for total suspended particulate (TSP) increments shall remain in effect and shall apply in determining the amount of available credits, except that this baseline area shall not be modified, or effect if the cabinet renews, the corresponding minor source baseline date in accordance with subsection (27)(b) of this section.

(6) "Baseline concentration" means that ambient concentration level which exists in the baseline area when the applicable minor source baseline date is established. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (c) of this subsection, and

(b) The allowable emissions of major stationary sources which commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

(c) The following shall not be included in the baseline concentration and shall affect the maximum applicable allowable increase:

1. Actual emissions at a major source, which result from construction commencing after the major source baseline date; and

2. Actual emissions increases and decreases at a stationary source occurring after the minor source baseline date.

(5)(a) "Baseline date" means major source baseline date, defined in subsection (24) of this section, or minor source baseline date, defined in subsection (27) of this section.

(b) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7470(d)(1)(A)(ii) or (iii) (Section 107(6)(d)(1)(A)(ii) or (iii) of the Clean Air Act) for the pollutant on the date of its complete application; and

2. For a major stationary-source, the pollutant would be emitted in significant amounts, or, for a major modification, there would be a significant net emissions increase of the pollutant.

(7) "Begin actual construction" means initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Those activities include, but are not limited to, installation of building supports and foundations, laying underground piping, and construction of permanent storage structures. For a change in method of operation, this term refers to those on-site activities other than the preparatory activities which mark the initiation of the change.

(8) "Best available control technology" means an emissions limitation, including a viable emission standard, based on the maximum degree of reduction for each pollutant subject to regulation under 42 U.S.C. 7401 to 7671 (Clean Air Act), which would be emitted from a proposed major stationary source or major modification which the cabinet, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for that source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant. Application of best available control technology shall not result in emissions of a pollutant which would exceed the emissions allowed by an applicable standard under 42 U.S.C. 7401, KAR Chapter 67, 60, 60, and 63, and 40 C.F.R. Parts 60, 61, and 63. If the cabinet determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, or operational standard, or combination of design, equipment, work practice, or operational standard, may be prescribed instead to satisfy the requirement for the application of best available control technology. That standard shall to the degree possible, establish the emissions reduction achievable by implementation of the design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(9) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control except the activities of a vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, 1987, which has been incorporated by reference in Section 21 of this administrative regulation.

(10) "Clean coal technology" means a technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(11) "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy - Clean Coal Technology" up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or a similar project funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least twenty (20)-percent of the total cost of the demonstration project.

(12) "Commence", for construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(13) "Complete" means, in reference to an application for a permit that the application contains information necessary for processing the application. Designating an application complete for permit processing does not preclude the cabinet from requesting or accepting additional information.

(14) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(15) "Electric utility—steam generating unit" means a steam electric generating unit that is constructed for the purpose of supplying more than one-third (1/3) of its potential electric output capacity and more than twenty five (25) megawatt electrical output to a utility power distribution system for sale. Steam supplied to a steam distributing system for the purpose of providing steam to a steam electric generator producing electric energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(16) "Emissions unit" means a part of a stationary source which emits or would have the potential to emit a pollutant subject to regulation under 42 U.S.C. 7401 to 7671 (Clean Air Act).

(17) "Federal land manager" means, for lands in the United States, the secretary of the department with authority over those lands.

(18) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. EPA, including those requirements developed pursuant to 40 C.F.R. 60, 61, and 63, requirements within an applicable State Implementation Plan (SIP) and any permit requirements established pursuant to 40 C.F.R. 62, or under regulations approved pursuant to 40 C.F.R. Part 51, Subpart I, including operating permits issued under an EPA approved program incorporated into the SIP, which expressly requires adherence to a permit issued under the program.
(19) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(20) "High terrain" means an area having an elevation of 900 feet or more above the base of the stack of a source.

(21) "Innovative control technology" means a system of air pollution control technology that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair-quality environmental impacts.

(22) "Low terrain" means an area other than high terrain.

(23) "Major modification" means a physical change in or change in the method of operation of a major stationary source that would result in a significant net increase in any pollutant subject to regulation under 42 U.S.C. 7401 to 7671q (Clean Air Act).

(a) A net emissions increase that is significant for volatile organic compounds shall be significant for ozone.

(b) A physical change in or change in the method of operation shall not include:

1. Routine maintenance, repair, and replacement;

2. Use of alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source where:

   a. The source was capable of accommodating before January 6, 1975, unless the change would be prohibited under a permit condition which was established after January 6, 1975; or

   b. The source is approved to use under a permit issued under this administrative regulation or under 40 CFR 52.21;

5. Increase in the hours of operation or in the production rate, unless the change would be prohibited after January 6, 1975, pursuant to 40 CFR 52.21; after June 6, 1979, pursuant to 401 KAR 51:016; after September 22, 1982, pursuant to this administrative regulation; or under 401 KAR 52:020 and 401 KAR 61:016; or

6. A change in ownership at a stationary source.

7. The addition, replacement, or use of a pollution control project at an existing electric utility steam generating unit, unless the cabinet, concuring with U.S. EPA, determines that such addition, replacement, or use renders the unit less environmentally beneficial, unless:

   a. The cabinet has reason to believe that the pollution control project would result in a significant net reduction in representative actual annual emissions of criteria pollutants over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of 42 U.S.C. 7401 to 7515 (Title I of the Clean Air Act), if any; and

   b. The cabinet determines that the increase will cause or contribute to a violation of any national ambient air quality standard or prevention of significant deterioration (PSD) increment or visibility limitation.

8. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

9. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

10. The reactivation of a very clean coal-fired electric utility steam generating unit.

(24) "Major source baseline date" means:

(a) For particulate matter and sulfur dioxide, January 6, 1975; and

(b) For nitrogen dioxide, February 8, 1988.

(26)(a) "Major stationary source" means:

1. Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of a pollutant subject to regulation under 42 U.S.C. 7401 to 7671q (Clean Air Act): fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants (with thermal dryers), Kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination of fossil fuel boilers) totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. Notwithstanding the stationary source size specified in subparagraph 1 of this paragraph, a stationary source which emits, or has the potential to emit, 250 tons per year or more of an air pollutant subject to regulation under 42 U.S.C. 7401 to 7671q (Clean Air Act), or

3. Any physical change that would occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(b) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(c) For this administrative regulation, the fugitive emissions of a stationary source shall not be included in determining if it is a major stationary source, unless the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants (with thermal dryers);

2. Kraft pulp mills;

3. Portland cement plants;

4. Primary zinc smelters;

5. Iron and steel mills;

6. Primary aluminum ore reduction plants;

7. Primary copper smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric, sulfuric, or nitric acid plants;

10. Petroleum refineries;

11. Lime plants;

12. Phosphate rock processing plants;

13. Coke oven batteries;

14. Sulfur recovery plants;

15. Carbon black plants (furnace process);

16. Primary lead smelters;

17. Fuel conversion plants;

18. Sintering plants;

19. Secondary metal production plants;

20. Chemical process plants;

21. Fossil fuel boilers (or combination of fossil fuel boilers) totaling more than 250 million BTUs per hour heat input;

22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

23. Taconite ore processing plants;

24. Glass fiber processing plants;

25. Charcoal production plants;

26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; and

27. Any stationary source category which, as of August 7, 1980, is being regulated under 401 KAR 57, 59, 60, and 63; 40 C.F.R. Parts 60, 61, and 63; or 42 U.S.C. 7411 or 7412 (Section 111 or 112 of the Clean Air Act).

(28) "Mandatory Class I federal area" means an area identified in 40 C.F.R. § 81, Subpart D, where the administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of Interior, has determined visibility to be an important value.

(27) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major
modification subject to 40 C.F.R. 52.21 or to regulations approved pursuant to 40 C.F.R. 51.166 submits a complete application under the relevant regulations. The trigger date shall be:

1. For particulate matter and sulfur dioxide, August 7, 1977; and

2. For nitrogen dioxide, February 8, 1988.

(b) A minor source baseline date established originally for the TSP increments shall remain in effect and shall apply in determining the amount of available PM2.5 increments, except that the cabinet may rescind the minor source baseline date if it can be shown, to the satisfaction of the cabinet, that the emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM2.5 emissions.

(28) "Natural conditions" means those naturally-occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

(29) "Necessary preconstruction approvals or permits" means those permits or approvals required under the regulations of 401 KAR Chapters 50 to 85 and federal air quality control laws and regulations.

(30)(a) "Net emissions increase" means the amount by which the sum of subparagraphs 1 and 2 of this paragraph exceeds zero:

1. An increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

2. Other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if:

1. For construction that commences prior to January 1, 2002, it occurs between the date ten (10) years before construction on the particular change commences, and the date that the increase from the particular change occurs.

2. For construction that commences on and after January 1, 2002, it occurs between the date five (5) years before construction on the particular change commences, and the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if the cabinet or the U.S. EPA has not relied on it in issuing a permit for the source under this administrative regulation or 40 C.F.R. 52.21, if the permit is in effect when the increase in actual emissions from the particular change occurs.

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is considered in calculating the amount of maximum allowable increases remaining available. For particulate matter, only PM10 emissions shall be used to calculate the net emissions increase for PM2.5.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

2. It is state or federally enforceable from the time that actual construction on the particular change begins; and

3. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that replaces a shuttered becomes operational only after a reasonable shut down period, not to exceed 180 days.

(31) "Pollution control project" means an activity or project undertaken at an existing electric utility steam-generating unit in order to reduce emissions from that unit. Such activities and projects are limited to:

(a) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(b) An activity or project to accommodate switching to a fuel that is less polluting than the fuel used prior to the activity or project, including but not limited to natural gas or coal reburning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;

(c) A permanent clean coal technology demonstration project conducted under 42 U.S.C. 5093(d) (Title II, section 101(d), of the Further Continuing Appropriations Act of 1985) or subsequent appropriations, up to a total of $2,600,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. Environmental Protection Agency;

(d) A permanent clean coal technology demonstration project that constitutes a repowering project.

(32) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. A physical or operational limitation on the capacity of the source means a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(33) "Reactivation" of a very clean coal fired electric utility steam generating unit means a physical change or change in the method of operation associated with the commencement of commercial operations by a coal fired utility unit after a period of discontinued operation if the unit:

(a) Has not been in operation for the two (2) year period between November 16, 1988, and November 15, 1990, and the emissions in that unit continue to be carried in the Kentucky emissions inventory after November 15, 1990;

(b) Was equipped prior to shutdown with a continuous system of emissions control achieving a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;

(c) Is equipped with low NOx burners prior to the time of commencement of operations following reactivation; and

(d) Is otherwise in compliance with the requirements of 42 U.S.C. 7401 to 7671q (Clean Air Act).

(34)(a) "Repowering" means replacement of an existing coal-fired boiler with one or more of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal fired turbine, integrated gasification fuel cell, or as determined by the Administrator of the U.S. EPA in consultation with the Secretary of Energy, a derivative of one or more of these technologies, or another technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(b) Repowering shall also include an oil or gas fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Department of Energy.

(c) The cabinet shall give expedited consideration to a permit application from a source that satisfies the requirements of this subsection and is granted an extension under 42 U.S.C. 7651h (Second 306 of the Clean Air Act).

(35) "Representative actual annual emissions" means the average annual rate in tons per year, at which the source is projected to emit a pollutant for the two (2) year period after a physical change or change in the method of operation of a unit (or a different consecutive two (2) year period within ten (10) years after that change) if the cabinet determines that this period is more representative of normal source operations, considering the effect the change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the cabinet shall:

(a) Consider all the relevant information, including but not limited to, historical operational data, the company's own representations, filings with local, state, or federal regulatory authorities, and compliance plans under 42 U.S.C. 7651 to 7651o (Title IV of the
VOLUME 30, NUMBER 10 – April 1, 2004

(b) Exclude, in calculating an increase in emissions that results from the particular physical change or change in method of operation at an electric utility steam generating unit, that portion of the unit’s emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

(88) "Secondary emissions" means emissions which would occur as a result of the construction, operation, or modification of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For this administrative regulation, secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from an off-site support facility which would not be constructed or increased in its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include emissions which come from a mobile source, (e.g., the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel).

(87) "Significant" means:
(a) In reference to a net emissions increase or the potential of a source to emit a pollutant listed in Section 22 of this administrative regulation, a rate of emissions that would equal or exceed a rate given in Section 22 of this administrative regulation.

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under 42 U.S.C. 7401 to 7671q (Clean Air Act), that is not listed in Section 22 of this administrative regulation, any emissions rate.

(c) Notwithstanding paragraph (b) of this subsection and Section 22 of this administrative regulation, "significant" means an emissions rate or net emissions increase associated with a major stationary source or major modification which is to be constructed within ten (10) kilometers of a Class I area and has an impact on that area equal or greater than one (1) μg/m³ (twenty-four (24) hour average).

(38) "Stationary source" means a building, structure, facility or installation which emits or may emit an air pollutant subject to regulation under the 42 U.S.C. 7401 to 7671q (Clean Air Act).

(39) "Temporary coal-technology demonstration project" means a coal coal-technology demonstration project that is operated for a period of five (5) years or less, and which complies with the permitting regulatory and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

(40) "Visibility impairment" means a humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

Section 2, Applicability. (1) This administrative regulation shall apply to the construction of a new major stationary source or any project at an existing major stationary source that commences construction after September 22, 1982, and locates in an area designated attainment or unclassifiable under 42 U.S.C. 7407(d)(1)(A)(ii) and (iii).

(2) Except as otherwise provided in this administrative regulation, the provisions of Sections 8 to 16 of this administrative regulation shall apply to the construction of a new major stationary source or a major modification of an existing major stationary source.

(3) The owner or operator of a new major stationary source or major modification, which is subject to the requirements of Sections 9 to 16 of this administrative regulation, shall not begin actual construction without a permit or permit revision issued under 401 KAR 52:020 stating that the major stationary source or major modification shall meet those requirements.

(4) Applicability tests for projects. Except as provided in subsection (5) of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed according to subparagraphs 1 to 4 of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. Emissions test for projects that involve clean units. An emissions increase shall not be deemed to occur for a project that will be constructed and operated at a clean unit without causing the unit to lose its clean unit designation as provided in Sections 20 and 21 of this administrative regulation.

4. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit using a method specified in subparagraphs 1 to 3 of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable procedure of paragraph (a) of the subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1(146).

(5) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 23 of this administrative regulation.

(6) An owner or operator undertaking a pollution control project (PCP) shall comply with Section 22 of this administrative regulation (major modification which:
(1) Commenced construction after September 22, 1982;
(2) Emits a pollutant regulated by 42 U.S.C. 7401 to 7671q (Clean Air Act); and
(3) Is constructed in an area designated as attainment or unclassifiable for a pollutant as defined pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) (Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act). Area designations are contained in 40 C.F.R. 81.316.

Section 2, [3] Ambient Air Increments. (1) In areas designated as Class I or II, increases in pollutant concentration over the baseline concentration shall be limited to the following levels:

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Maximum Allowable Increase (Micrograms per cubic meter)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>---------------------------------------------------------</td>
</tr>
<tr>
<td>Particulate Matter</td>
<td>4</td>
</tr>
<tr>
<td>PM₁₀, annual arithmetic mean</td>
<td>6</td>
</tr>
<tr>
<td>PM₁₀, 24-hour maximum</td>
<td>8</td>
</tr>
<tr>
<td>Sulfur Dioxide</td>
<td>---------------------------------------------------------</td>
</tr>
<tr>
<td>Annual arithmetic mean</td>
<td>2</td>
</tr>
<tr>
<td>24-hour maximum</td>
<td>5</td>
</tr>
<tr>
<td>3-hour maximum</td>
<td>25</td>
</tr>
<tr>
<td>Nitrogen Dioxide</td>
<td>---------------------------------------------------------</td>
</tr>
<tr>
<td>Annual arithmetic mean</td>
<td>2.5</td>
</tr>
<tr>
<td>Class II</td>
<td>---------------------------------------------------------</td>
</tr>
<tr>
<td>Particulate Matter</td>
<td>17</td>
</tr>
<tr>
<td>PM₁₀, annual arithmetic mean</td>
<td>30</td>
</tr>
<tr>
<td>PM₁₀, 24-hour maximum</td>
<td>30</td>
</tr>
<tr>
<td>Sulfur Dioxide</td>
<td>---------------------------------------------------------</td>
</tr>
<tr>
<td>Annual arithmetic mean</td>
<td>20</td>
</tr>
</tbody>
</table>
VOLUME 30, NUMBER 10 – April 1 2004

24-hour maximum | 91
3-hour maximum | 512

Nitrogen Dioxide:

Annual arithmetic mean | 28

(specified in Section 23 of this administrative regulation.)

(2) For any [a] period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 3. [4.] Ambient Air Ceilings. The [No] concentration of a regulated NSR pollutant [specified in Section 2 of this administrative regulation] shall not exceed the concentration allowed under the national secondary ambient air quality standard or under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.:

1. The concentration permitted under the national secondary ambient air quality standard;

2. The concentration permitted under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure.

Section 4. [6.] Restrictions on Area Classifications. (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;
(b) National wilderness areas and national memorial parks which exceed 5,500 acres in size; and
(c) National parks which exceed 6,000 acres in size.

2. Any other area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(g).

3. The visibility protection requirements of this administrative regulation shall apply only to sources which may impact a mandatory Class I federal area.

4. The following areas may be redesignated only as Class I or II:

(a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and
(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

Section 5. [6.] Exclusions from Increment Consumption. (1) The cabinet may, after notice and opportunity for at least one (1) public hearing to be held in accordance with procedures established in 401 KAR 52-00, exclude the following concentrations in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources that have [which have been] converted from the use of petroleum products, natural gas, or both by reason of an order in effect under a federal statute or regulation over the emissions from these [the] sources before the effective date of the order;

(b) Concentrations attributable to the increase in emissions from sources that [which] have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to a [the] federal statute over the emissions from those sources before the effective date of the plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

(d) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources that [which] are affected by plan revisions approved by the Administrator of the U.S. EPA as meeting the criteria specified in subsection (2) [49] of this section.

2. Exclusion of concentrations shall not apply more than five (5) years after the effective date of the order to which subsection (1)(a) of this section refers or the curtailment plan to which subsection (1)(b) of this section refers, whichever is applicable. If both an order and curtailment plan are applicable, an [no] exclusion shall apply more than five (5) years after the later of the two (2) effective dates.

3. For excluding concentrations pursuant to subsection (1)(d) of this section [the SIP revision shall specify the following provisions:]

(a) The time period over which the temporary emissions [emissions] increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur shall be specified and [the time period] shall not exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

(b) The time period for excluding certain contributions in accordance with paragraph (a) of this subsection shall not be [is] not renewable;

(c) An emissions increase from a stationary source shall not occur that will [No emissions increase will occur from a stationary source which would]:

1. Impact a Class I area or an area in which [where] an applicable increment is known to be violated; or
2. Cause or contribute to the violation of a national ambient air quality standard; and

(d) Limitations shall be in effect at the end of the time period established in paragraph (a) of this subsection, which ensure that the emissions levels from stationary sources affected by the SIP revision shall [will] not exceed the [those] levels occurring from those sources before the revision was approved.

Section 6. [7.] Stack Heights. (1) The degree of emissions [emissions] limitation required for control of an air pollutant under this administrative regulation shall not be affected by:

(a) So much of the stack height of a source as exceeds good engineering practice;

(b) Another dispersion technique.

2. Subsection (1) of this section shall not apply to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

Section 7. Exemptions. [8.] Review of Major-Stationary Sources and Major Modifications. Source Applicability and Exemption: (1) A major stationary source or major modification to which Sections 9 to 17 of this administrative regulation apply shall not begin actual construction until it obtains a permit stating that the stationary source or modification shall comply with Sections 9 to 17 of this administrative regulation.

2. Sections 9 to 17 of this administrative regulation shall apply to a major stationary source and major modification for each pollutant that it would emit which is subject to regulation under 42 U.S.C. 7401 to 7674a (Clean Air Act), except as required in Section 2 of this administrative regulation.

3. Sections 9 to 17 of this administrative regulation shall apply only to a major stationary source or major modification that will be constructed in an area designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407(d)(1)(A)(i) or (iii) (Section 107(d)(1)(A)(ii) or (iii) of the Clean Air Act).

4. Sections 9 to 17 of this administrative regulation shall not apply to a particular major stationary source or major modification, if:

(a) The owner or operator

1. Obtained the necessary federal, state, and local preconstruction approval effective before September 22, 1982;

2. Commenced construction before September 22, 1982; and

3. Did not discontinue construction for a period of eighteen (18) months or more, [or]

(b) The major stationary source is [or modification would be] a nonprofit health institution, a [or] nonprofit educational institution, or a major modification would occur at such an [the] institution, and the Governor of the Commonwealth of Kentucky requests that it be exempt from those requirements; [or]

(c) The source or modification is [would be] a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants [with thermal dryers];

2. Kraft pulp mills;

- 2193 -
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants ([furnace process]);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers, for combination of fossil-fuel boilers, [[total] totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 50 million BTUs per hour heat input;
or
27. Another stationary source category which, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412, [[Section 111 or 112 of the Clean Air Act]], or
(d) The source or modification is a portable stationary source that [which] has previously received a permit under this administrative regulation;
1. The owner or operator proposes to relocate the source and emissions of the source at the new location [[would] be temporary;
2. The emissions from the source [[will] would] not exceed its allowable emissions;
3. The emissions from the source [[will] would] not impact a Class I area or an area where an applicable increment is known to be violated; and
4. Reasonable notice is given to the cabinet prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.
(e) The source or modification was not subject to this administrative regulation with respect to particulate matter requirements in effect before July 31, 1987, and the owner or operator:
1. Obtained all final federal, state, and local preconstruction approvals or permits necessary under the applicable SIP [state implementation plan] before July 31, 1987;
2. Committed construction within eighteen (18) months after July 31, 1987; and
3. Did not discontinue construction for a period of eighteen (18) months or more and completed construction within a reasonable period of time.
(f) The source or modification was subject to this administrative regulation for [[periodic]-periodic] particulate matter requirements in effect before July 31, 1987, and the owner or operator submitted an application for a permit under the applicable permit program.[This administrative regulation] before that date, and the cabinet subsequently determined that the application as submitted was complete with respect to the particulate matter requirements then in effect [in this administrative regulation]. [If no], the requirements of Sections 8 to 17 of this administrative regulation that were in effect before July 31, 1987, shall apply to the source or modification.
(2) (6) Sections 8 to 16, 9 to 17 of this administrative regulation shall not apply to a major stationary source or major modification for [with respect to] for a particular pollutant if the owner or operator demonstrates that, for that pollutant, the source or modification is located in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) [[Section 107(d)(1)(A)(i) of the Clean Air Act]].
(3) (6) Sections 9, 11, and 13, 14 of this administrative regulation shall not apply to a major stationary source or major modification for the particular pollutant if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from a modification[the modifications]:
(a) Will not impact a Class I area or an area where an applicable increment is known to be violated; and
(b) Will be temporary.
(4) (6) Sections 9, 11, and 13, 14 of this administrative regulation, as applicable [they apply] to a maximum allowable increase for a Class II area, shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant [subject to regulation under 42 U.S.C. 7401 to 7671q (Clean Air Act)] from the modification after the application of BACT [best available control technology] will be less than fifty (50) tons per year.
(5) (6) The cabinet may exempt a proposed major stationary source or major modification from the monitoring requirements of Section 11 of this administrative regulation for a particular pollutant, if:
(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification will cause air quality impacts in an area, which are less than the amounts listed in the following table; or

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Air Quality Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carbon monoxide</td>
<td>575 μg/m³</td>
</tr>
<tr>
<td>Nitrogen dioxide</td>
<td>14 μg/m³</td>
</tr>
<tr>
<td>Particulate matter</td>
<td>10 μg/m³ of PM₁₀</td>
</tr>
<tr>
<td>Sulfur dioxide</td>
<td>13 μg/m³</td>
</tr>
<tr>
<td>Ozone</td>
<td>No de minimis air quality level provided for ozone. However, a net increase of 100 tons per year or more of volatile organic compounds subject to this administrative regulation is required to perform an ambient impact analysis including the gathering of ambient air quality data.</td>
</tr>
<tr>
<td>Lead</td>
<td>0.1 μg/m³</td>
</tr>
<tr>
<td>Mercury</td>
<td>0.25 μg/m³</td>
</tr>
<tr>
<td>Beryllium</td>
<td>0.001 μg/m³</td>
</tr>
<tr>
<td>Fluorides</td>
<td>0.25 μg/m³</td>
</tr>
<tr>
<td>Vinyl chloride</td>
<td>15 μg/m³</td>
</tr>
<tr>
<td>Hydrogen sulfide</td>
<td>0.2 μg/m³</td>
</tr>
<tr>
<td>Total reduced sulfur</td>
<td>10 μg/m³</td>
</tr>
<tr>
<td>Reduced sulfur compounds</td>
<td>10 μg/m³</td>
</tr>
</tbody>
</table>

[Given in Section 24 of this administrative regulation; or]
(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in the table in paragraph (a) of this subsection [Section 24 of this administrative regulation], and the pollutant is not listed in the table [Section 24 of this administrative regulation].
(6) Permitting requirements equivalent to Section 9(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for nitrogen oxides, if:
(a) The owner or operator of the source or modification submitted an application for a permit or permit revision under the applicable permit program before the date on which the provisions embodying the maximum allowable increase took effect in the Kentucky SIP, and
(b) The cabinet subsequently determined that the application as submitted before that date was complete.
(7) Permitting requirements equivalent to Section 10(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for PM₁₀, if:
(a) the owner or operator of the source or modification submitted an application for a permit under the applicable permit program before the provisions embodying the maximum allowable increases for PM₁₀ took effect as part of Kentucky's SIP; and
(b) the cabinet subsequently determined that the application as submitted before that date was complete.

(9)(a) (9)(a) The cabinet may determine that, [at the discretion of the cabinet], the requirements for air quality monitoring of PM₁₀ in Section 11 [42] of this administrative regulation shall [may] not apply to a particular source or modification, if:
1. The owner or operator of the source or modification submitted an application for a permit under this section on or before June 1, 1988; and
2. The cabinet subsequently determined that the application as submitted before that date was complete, except for the requirements for monitoring particular matter specified in Section 11 [42] of this administrative regulation.

(b) The requirements for air quality monitoring of PM₁₀ in Section 11 [42] of this administrative regulation shall apply to a particular source or modification if the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation after June 1, 1988, and no later than December 1, 1988.

The data shall have been gathered over at least the period from February 1, 1988, to the date the application becomes complete in accordance with Section 11 [42] of this administrative regulation; and []

2. If [unless] the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period, which may [may not be less than four (4) months], the data that Section 11 [42] of this administrative regulation requires shall have been gathered over that shorter period.

(9)(b) The requirements of Section 9(2) [40(2)] of this administrative regulation shall not apply to a stationary source or modification for a [with respect to any] maximum allowable increase for PM₁₀, if:
(a) the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation before the date the provisions embodying the maximum allowable increases for PM₁₀ took effect, and the cabinet subsequently determined that the application as submitted before that date was complete.

(b) Instead, the requirements of Section 9(2) [40(2)] shall apply for the maximum allowable increases for TSP as in effect on the day the application was submitted.

(4) The requirements of Section 10(2) of this administrative regulation shall not apply to a stationary source or modification with respect to a maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under 40 C.F.R. 52.21 or this administrative regulation before the date on which the provisions embodying the maximum allowable increase took effect, and the cabinet subsequently determined that the application as submitted before that date was complete.

Section 9. [9.6] Control Technology Review. (1) A major stationary source or major modification shall meet each applicable emissions limitation under the Kentucky SIP [401 KAR 40(1)(B)], and each applicable emissions [emission] standard and standard of performance under 40 C.F.R. Parts 60 and 61 [401 KAR 40(1)(B)].

(2) A new major stationary source shall apply BACT (best available control technology) for each regulated NSR pollutant [subject to regulation under 42 U.S.C. 7401 to 7671q (Clean Air Act)] for which the source has [that it will have] the potential to emit in significant amounts.

(3) A major modification shall apply BACT:
(a) For each regulated NSR pollutant that results from best available control technology for each pollutant subject to regulation under 42 U.S.C. 7401 to 7671q (Clean Air Act), for which it will result in a significant net emissions increase at the source; and []

This requirement applies to:
(b) For each proposed emissions unit at which a net emissions increase in the pollutant occurs [will occur] as a result of a physical change or change in the method of operation of the unit.

(4) For phased construction projects: []
(a) The cabinet shall review and modify, as appropriate, the BACT determination (of best available control technology) shall be reviewed and modified as appropriate at the latest reasonable time occurring [which occurs] to later than eighteen (18) months prior to commencement of construction of each independent phase of the project and []
(b) The owner or operator of the applicable stationary source may then be required to demonstrate the adequacy of a previous BACT determination (of best available control technology) for the source.

Section 9. [9.10.] Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emissions [emissions] increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, [including secondary emissions], shall [will] not cause or contribute to air pollution in violation of:
1. A national ambient air quality standard in an air quality control region; or
2. An applicable maximum allowable increase over the baseline concentration in any [an] area.


(2) If an air quality model specified in 40 C.F.R. Part 51, Appendix W, is inappropriate, the model may be modified or another model substituted.

(a) The use of a modified or substitute model [This change shall be]:
1. Subject to notice and opportunity for public comment under 401 KAR 52:100; and [Section 16 of this administrative regulation.]
2. Made on a case-by-case basis and receive written approval from the U.S. EPA [Written approval of the U.S. EPA shall be obtained for a modification or substitution.] (b) Methods similar to those outlined in the "Workbook for the Comparison of Air Quality Models," specified in 401 KAR 50:040, Section 1(3), shall be used to determine the comparability of air quality models.

(a) An application for a permit or permit revisions under 401 KAR 52:220, and this administrative regulation shall contain an analysis of ambient air quality in the area that the major stationary source or major modification will affect for each of the following [pollutants]:
1. For a source, each pollutant that the source [it] will have the potential to emit in a significant amount [as defined in Section 1-379] of this administrative regulation;
2. For a modification, each pollutant that the modification [for which it] will result in a significant net emissions increase.
(b) For [With respect to a] pollutant that does not have a [for which no] national ambient air quality standard [exists], the analysis shall contain [the] air quality monitoring data the cabinet determines necessary to assess ambient air quality for that pollutant in an area that the emissions of that pollutant will affect.
(c) For pollutants, [other than] nonmethane hydrocarbons, [for which a standard exists [does exist]], the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant will cause or contribute to a violation of the standard or a maximum allowable increase.
(d) The required continuous air quality monitoring data shall have been gathered over a period of at least one (1) year and shall
If the cabinet determines that a complete and adequate analysis may be accomplished with monitoring data gathered over a period shorter than one year, that period shall be the shorter of the two.

(e) For analysis of volatile organic compounds, the owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 C.F.R. Part 51, Appendix S, section IV, may provide postconstruction monitoring data for ozone instead of providing preconstruction data as required in this section [required-under-paragraphs (a) to (d) of this subsection].

(f) [For an application that is complete, except for the requirements of paragraphs (e) and (f) of this subsection pertaining to PAMC, after December 1, 1988, and no later than August 1, 1988, the data that paragraph (c) of this subsection requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, unless the cabinet determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four (4) months), the data that paragraph (c) of this subsection requires shall have been gathered over that shorter period. (2) The monitoring of PAMC under Section 7(8)(a) and (b) and 8(9)(a) and (b) of this administrative regulation, the owner or operator of the source or major modification shall use a monitoring method approved by the cabinet and shall estimate the ambient concentrations of PAMC using the data collected by that approved monitoring method in accordance with estimating procedures approved by the cabinet.

(3) Postconstruction monitoring. After construction of a major stationary source or major modification, the owner or operator of a major stationary source or major modification, after construction of the stationary source or modification, shall conduct [the] ambient monitoring that [which] the cabinet determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in an area.

(3) Operation of monitoring stations. During the operation of air quality monitoring stations, the owner or operator of a major stationary source or major modification shall meet the requirements of 40 C.F.R. Part 58, Appendix B [which is incorporated by reference in Section 21 of this administrative regulation, during the operation of monitoring stations] to satisfy the air quality analysis requirements of this section [subsections (1) and (2) of this section].

Section 13. [14.] Additional Impact Analysis. (1) The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation which would occur as a result of:

(a) The source or modification; and

(b) General commercial, residential, industrial and other growth associated with the source or modification.

The owner or operator shall be required to provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(3) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

(4) Visibility monitoring.

(a) The cabinet may require monitoring of visibility in a Class I area impacted by the proposed new stationary source or major modification using:

(1) Human observations; [1]

(2) Teleradiometers; [2]

(3) Photographic cameras; [1]

(4) Nephelometers; [1]

(5) Fine particulate monitors; [3] or

(6) Other appropriate methods as specified by the U.S. EPA.

(b) The method selected shall be determined on a case-by-case basis by the cabinet.

(c) Visibility monitoring required by the cabinet in a Class I area shall be approved by the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the U.S. EPA, and the federal land manager, upon request.

Section 14. [16.] Sources Impacting Class I Areas; Additional Requirements. (1) Notice to U.S. EPA and federal land managers. The cabinet shall provide,

(a) Written notice to the U.S. EPA, the federal land manager, and the federal official charged with direct responsibility for management of lands within a Class I area of a permit application for a proposed major stationary source or major modification that emissions from which may affect the Class I area.

(b) The cabinet shall provide Notice promptly after receiving the permit application. The notice shall:

1. Include a copy of all information relevant to the permit application;

2. [and shall] Be given within thirty (30) days of receipt and at least sixty (60) days prior to the public hearing on the application for a permit to construct; [and shall]

3. Include an analysis of the proposed sources anticipated impacts on visibility in the Class I area.

(c) The cabinet shall also provide the federal land manager and other federal officials with a copy of the preliminary determination [required under Section 16 of this administrative regulation, and shall make available to them the materials used in making that determination, promptly after the cabinet makes it. The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an advanced notification of the permit application.

(2) Federal land manager. The federal land manager and the federal official charged with direct responsibility for management of lands located in a Class I area shall have an affirmative responsibility to protect the visibility and other air quality related values [including visibility] of the lands and to consider, in consultation with the cabinet, whether a proposed source or modification will have an adverse impact on those values.

(3) Visibility analysis.

(a) The cabinet shall consider an analysis performed by the federal land manager, which is provided within thirty (30) days of the notice and analysis required by subsection (1) of this section, which shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

(b) If the cabinet finds that analysis does not demonstrate to the satisfaction of the cabinet that an adverse impact on visibility...
ity will result in the Class I area, the cabinet shall, in the public notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation may be obtained [can be explained].

(4) Denial; impact on air quality related values. (a) The federal land manager of lands located in a Class I area may demonstrate to the cabinet that the emissions from a proposed source or modification will have an adverse impact on the visibility and other air quality related values [including visibility] of those lands, even though [notwithstanding that the] change in air quality resulting from emissions from the proposed source or modification will not cause or contribute to concentrations of air pollutants that will exceed the maximum allowable increases for a Class I area as defined in Section 2(1) of this administrative regulation.

(b) If the cabinet concurs with the demonstration specified in paragraph (a) of this subsection, then the cabinet shall not issue the permit or permit revision.

(5) Class I variances.

(a) The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from the proposed source or modification will not have an adverse impact on the visibility and other air quality related values of lands located in the Class I area [including visibility], even though [notwithstanding that the] change in air quality resulting from emissions from the source or modification will not cause or contribute to concentrations of air pollutants that will exceed the maximum allowable increases for a Class I area as specified in Section 2(1) of this administrative regulation.

(b) If the federal land manager concurs with the demonstration specified in paragraph (a) of this subsection and he so certifies, the cabinet may, if the other applicable requirements of this administrative regulation are met, issue the permit or permit revision with [the] emissions limitations that are necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides do not exceed the maximum allowable increases over the minor sulfur dioxide baseline concentration for the pollutants as specified in Section 2(1) of this administrative regulation. [In Section 2 of this administrative regulation.]

(6) Sulfur dioxide variance by governor with federal land manager's concurrence.

(a) The owner or operator of a proposed source or modification, which cannot be approved under subsection (5) of this section because the source cannot be constructed without exceeding a maximum allowable increase in sulfur dioxide applicable to a Class I area for a period of twenty-four (24) hours or less, may demonstrate to the Governor of the Commonwealth of Kentucky that a variance [under this clause] will not adversely affect the visibility or other air quality related values of the area [including visibility].

(b) The governor, after consideration of the federal land manager's recommendation, if applicable, and subject to his concurrence, may, after notice and public hearing, grant a variance from the maximum allowable increase.

(c) If a variance is granted, the cabinet shall issue a permit or permit revision to the source or modification under the requirements of 401 KAR Chapter 52 [subsection (6) of this section] if the other applicable requirements of this administrative regulation are met.

(7) Variance by the governor with the President's concurrence.

(a) If the Governor of the Commonwealth of Kentucky recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President of the United States of America.

(b) If the variance is approved by the President, the cabinet shall issue a permit or permit revision in accordance with [pursuant to] the requirements of 401 KAR Chapter 52 [subsection (5) of this section], if the other applicable requirements of this administrative regulation are met.

(8) Emissions [Emission] limitations for presidential or gubernatorial variance. For a permit or permit revision issued pursuant to subsections (6) or (7) of this section the source or modification shall comply with the emissions [those emission] limitations necessary to assure that:

(a) Emissions of sulfur dioxide from the source or modification shall not, if during a day on which the other applicable maximum allowable increases are exceeded, cause or contribute to concentrations of sulfur dioxide that will exceed the maximum allowable increases over the baseline concentration as specified in the following table. [Section 26 of this administrative regulation] and

<table>
<thead>
<tr>
<th>Maximum Allowable Increase (Micrograms per cubic meter)</th>
<th>Terrain areas</th>
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<tbody>
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<td>24-hour maximum</td>
<td>Low</td>
</tr>
<tr>
<td>3-hour maximum</td>
<td>35</td>
</tr>
<tr>
<td>24-hour maximum</td>
<td>130</td>
</tr>
</tbody>
</table>

(b) To assure that the emissions will not cause or contribute to concentrations that exceed the other applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than a total of eighteen (18) days, which are not necessarily consecutive, during an annual period.

Section 15. [46.] Public Participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100, and 40 C.F.R. 51.166(a) and this administrative regulation in processing applications under this administrative regulation.

Section 16. [47.] Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982, shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR Chapter 52 or under the terms of an approval to construct who constructs or operates a source or modification not in accordance with the application submitted to the cabinet under this administrative regulation or under the terms of an approval to construct, or an owner or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982 without applying for and receiving approval, shall be subject to appropriate enforcement action.

(2) (a) Approval to construct shall become invalid if construction:

1. Is not commenced within eighteen (18) months after receipt of the approval; [if construction] or
2. Is discontinued for a period of eighteen (18) months or more; [or if construction] or
3. Is not completed within a reasonable time.

(b) The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified.

1. An extension [this provision] shall not apply to the time period between construction of the approved phases of a phased construction project; and
2. Each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(3) Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with 401 KAR Chapters 50 to 58 [63.] and other requirements of local, state, or federal law.

(4) If [when] a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then Sections 8 to 16 [9 to 18] of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5) (a) The provisions of this subsection shall apply to projects existing emissions units at a major stationary source other than projects at a clean unit or at a source with a PAL, if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and
2. The owner or operator elects to use the method specified in 401 KAR 51.001, Section (12)(2)(b) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;
2. Identification of the emissions units for which emissions of a regulated NSR pollutant could be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including:
   a. Baseline actual emissions;
   b. Projected actual emissions;
   c. Amount of emissions excluded in calculating projected actual emissions and an explanation for why that amount was excluded; and
   d. Any applicable netting calculation.

(c) For a project specified in paragraph (a) of this subsection, the owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by any emissions unit identified in paragraph (b) of this subsection; and

2. Calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis for:
   a. Five (5) years following resumption of regular operations after the change;
   b. Ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of the regulated NSR pollutant at the emissions unit.

(d) If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator shall:
   a. Provide a copy of the information in paragraph (b) of this subsection to the cabinet;
   b. Shall not be required to obtain a determination from the cabinet before beginning actual construction.

2. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that set out the unit's annual emissions during the calendar year that preceded submission of the report.

(e) For any existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:
   a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceeds the baseline actual emissions, as documented and maintained pursuant to paragraph (b) of this subsection, by a significant amount for that regulated NSR pollutant; and
   b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (b) of this subsection.

2. The report shall be submitted within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:
   a. The name, address and telephone number of the major stationary source;
   b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and
   c. Any other information that the owner or operator wishes to include in the report.

(f) The owner or operator of the source shall make the information required to be documented and maintained under this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 17. [48] Environmental Impact Statements. If a proposed source or modification is subject to action by a federal agency which might necessitate preparation of an environmental impact statement under [pursuant to] 42 U.S.C. 4321 to 4370d (the National Environmental Policy Act), review by the cabinet conducted in accordance with [pursuant to] this administrative regulation shall be coordinated with the broad environmental reviews under that Act and under 42 U.S.C. 7609 ([Section 309 of the Clean-Air Act]) to the maximum extent feasible and reasonable.

Section 18. [49] Innovative Control Technology. (1) An owner or operator of a proposed major stationary source or major modification may request the cabinet in writing to approve a system of innovative control technology.

(2) The cabinet may [shall], with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology if:

(a) The proposed control system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;
(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 8(2) [9(2)] of this administrative regulation by a date specified by the cabinet. The date shall not be later than four (4) years from the time of start-up or seven (7) years from permit issuance;
(c) The source or modification will meet requirements equivalent to those in Sections 8 and 9 [9.9 and -10] of this administrative regulation based on the emissions rate that the stationary source employing the system of innovative control technology will be required to meet on the date specified by the cabinet;
(d) The source or modification will not before the date specified by the cabinet:

1. Cause or contribute to a violation of an applicable national ambient air quality standard; or
2. Impact an area in which [where] an applicable increment is known to be violated;
(e) Section 14 [46] of this administrative regulation [relating to Class I areas] has been satisfied for all periods during the life of the source or modification; and
(f) All other applicable requirements including those for public participation have been met.

(3) The cabinet shall withdraw approval to employ a system of innovative control technology if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;
(b) The proposed system fails before the specified date and contributes [as a tox contributor] to an unreasonable risk to public health, welfare, or safety; or
(c) The cabinet decides that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emissions [reduction] within the specified time period or the approval is withdrawn in accordance with subsection (3) of this section, the cabinet may allow the source or modification up to an additional three (3) years to meet the requirement for the application of BACT [best available control technology] through use of a demonstrated system of control.

Section 19. [20] Permit Condition Rescission. (1a) An owner or operator holding a permit for a stationary source or modification which contains conditions pursuant to 401 KAR 51:015 or 401 KAR 51:016E may request that the cabinet rescind the applicable conditions.

(b) An owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under this administrative regulation as in effect on July 30, 1987, or an earlier version of this administrative regulation, may request that the cabinet rescind the permit or a particular portion of the permit.

(2) The cabinet shall rescind a permit condition if requested and if the applicant can demonstrate to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification.

Section 20. Clean Unit Test for Emissions Units that are Subject to BACT or LAER. For any emissions unit that is subject to BACT or LAER and for which the cabinet has issued a major NSR permit in the past ten (10) years, an owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at a clean unit is part of a project that is a major modification.

(1) General provisions for clean units.

(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.
(b) A project for which the owner or operator begins actual
construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins;

1. After the effective date of the clean unit designation as determined pursuant to subsection (3) of this section; and

2. Before the expiration date of the clean unit designation as determined pursuant to subsection (4) of this section.

(a) Except for a unit that meets the provisions for clean units under subsection (2)(b) of this section, the unit shall lose its clean unit designation during a project at a clean unit, the project shall not:

1. Cause the need for a change in the emissions limitations or work practice requirements adopted in conjunction with BACT in the permit for the unit; or

2. Alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (5)(c) of this section.

(b) Unless an emissions unit qualifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions, if:

1. The project causes the need for a change in the emissions limitations or work practice requirements that were determined in conjunction with BACT in the permit for the unit; or

2. Any physical or operational characteristics that formed the basis for the BACT determination as specified in subsection (5)(d) of this section.

(e) Clean unit designation shall end immediately prior to the time actual construction begins on a project that will cause a unit to lose its clean unit designation if the owner or operator begins actual construction on a project before applying for a permit revision.

(b) As a project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(a)(e)(1) and 4(b) of this administrative regulation as if the emissions unit is not a clean unit.

2. Qualifying or requalifying to use the clean unit applicability test.

(a) An emissions unit shall automatically qualify as a clean unit if the unit meets the requirements in this paragraph.

1. Permitting requirement. The owner or operator of an emissions unit shall have received a major NSR permit within the past ten (10) years and shall maintain and provide information on request by the cabinet or U.S. EPA to demonstrate that this permitting requirement is met.

2. Qualifying air pollution control technologies requirement. Air pollution control technologies from the emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets the following requirements:

a. The control technology shall achieve the BACT or LAER level of emissions reductions determined by issuance of a major NSR permit within the past ten (10) years.

b. The emissions unit shall not be eligible for the clean unit designation if the BACT determination did not result in a requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type; and

b. The owner or operator shall make an investment to install the control technology. An investment shall include expenses to research the application of or to actually apply a pollution prevention technique to the emissions unit.

(b) Requalifying for the clean unit designation. After the original clean unit designation expires or is lost, an emissions unit may requalify as a clean unit under the provisions of this paragraph or under Section 21 of this administrative regulation.

1. For an emissions unit that is requalifying for clean unit designation, an owner or operator shall obtain a new major NSR permit or permit revision, as applicable, issued pursuant to 401 KAR 52:020.

2. The permit shall require compliance with the current-day BACT or LAER, and the emissions unit shall meet the requirements in subsection (3)(a) of this section.

3. Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.

(a) The effective date for an original clean unit designation and for an emissions unit that requalifies as a clean unit by implementing a new control technology to meet current day BACT shall be:

1. The earlier of the date the emissions unit’s air pollution control technology is placed into service or three (3) years after the date the major NSR permit or permit revision is issued; and

2. No sooner than the date that provisions for clean units become effective in the Kentucky SIP.

(b) The effective date for emissions units that requalify for the clean unit designation using an existing control technology shall be the date the major NSR permit or permit revision is issued.

4. Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to paragraph (a) or (b) of this subsection, as applicable.

(a) For an emissions unit that automatically qualifies as a clean unit under subsection (2)(a) of this section or a unit that requalifies by implementing new control technology to meet current-day BACT, the expiration date of the clean unit designation shall be:

1. Ten (10) years after the effective date or ten (10) years after the date the equipment went into service, whichever is earlier; or

2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation pursuant to subsection (5) of this section.

(b) The clean unit designation for an emissions unit that requalifies for the clean unit designation using an existing control technology shall expire:

1. Ten (10) years after the effective date; or

2. At any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (6) of this section.

5. Required Title V permit content for a clean unit. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which this clean unit designation applies.

(b) The effective date of the clean unit designation.

1. If the exact effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date and

2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the Title V permit at the first opportunity for any reason the permit is opened, but not later than the next renewal.

(c) The expiration date of the clean unit designation.

1. If the exact expiration date is not known at the date the clean unit designation is initially recorded into the Title V permit, the permit shall describe the event that shall determine the expiration date.

2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and

3. If originally absent from the Title V permit, the expiration date shall be added to the Title V permit at the first opportunity for any reason the permit is opened, but not later than the next renewal.

(d) All emissions limitations and work practice requirements adopted in conjunction with BACT and any physical or operational characteristics that formed the basis for the BACT determination.

(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (9) of this section.

(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (6) of this section.

6. Maintaining the clean unit designation.

(a) The owner or operator of a clean unit shall conform to the provisions of this subsection to maintain the clean unit designation.

1. The clean unit shall comply with the emissions limitations or
work practice requirements adopted in conjunction with the BACT that are recorded in the major NSR permit or permit revision and subsequently reflected in the Title V permit; 
2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit's condition in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT determination; 
3. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation; and 
4. The clean unit shall continue to control emissions using the specific air pollution control technology that is the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.

(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant shall only affect the clean unit designation for that pollutant.

(7) Netting at clean units.

(a) Netting that occurs or that clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis unless:
1. Such use occurs before the effective date of the clean unit designation, or after the clean unit designation expires; or
2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.

(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if:
1. The unit reduces emissions below the level that qualified the unit as a clean unit; and
2. The reductions are surplus, quantifiable, and permanent.

(c) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

(8) Effect of area redesignation on clean units.

(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.

(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements currently applicable in the area, regardless of the area's original attainment status during the previous designation period.

Section 21: Clean Unit Provisions for Emissions Units that Achieve an Emissions Limitation Comparable to BACT. For an emissions unit at a major stationary source that does not qualify as a clean unit under Section 20 of this administrative regulation but is achieving a level of emissions control comparable to BACT, the owner or operator may use the clean unit test specified in this section to determine if an emissions increase at the unit is part of a project that is a major modification.

(1) General provisions for clean units.

(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.

(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:
1. After the effective date of the clean unit designation as determined pursuant to subsection (4) of this section; and
2. Before the expiration date of the clean unit designation as determined pursuant to subsection (5) of this section.

(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:
1. Cause the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to BACT according to subsection (3) of this section; or
2. Alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT according to subsection (7)(d) of this section.

(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions, if:
1. The project causes the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to BACT; or
2. The project will alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT.

2. A clean unit designation shall end immediately prior to the time actual construction begins on a project that will cause a unit to lose its clean unit designation, if the owner or operator begins actual construction on a project before applying for a permit revision.

(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(4)(a)(1), 2, and 4(b) of this administrative regulation as if the emissions unit is not a clean unit.

(2) Qualifying or requalifying to use the clean unit applicability test.

(a) An emissions unit shall qualify as a clean unit if the unit meets the requirements in this paragraph.

1. Qualifying air pollution control technology requirement. Air pollutant emissions from an emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, and the owner or operator shall:
   a. Demonstrate that an emissions unit's control technology is comparable to BACT according to the requirements of subsection (3) of this section;
   b. Demonstrate that an emissions unit's control technology reduces emissions below the level of a standard, uncontrolled emissions unit of the same type;
   c. Make an investment to install the control technology. An investment shall include expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit.

2. Impact of emissions from the unit requirement. The allowable emissions from the emissions unit, as determined by the cabinet, shall not:
   a. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or
   b. Adversely impact visibility or another air quality related value that has been identified as a federal Class I area by a federal land manager and for which information is available to the general public.

3. Date of installation requirement.

a. For control technology installed before provisions for clean units are effective in the Kentucky SIP, the owner or operator of an emissions unit with control technology on which a clean unit designation is based, shall apply for clean unit designation within two (2) years after the requirements for clean units become effective in the Kentucky SIP.

b. For control technology installed after the provisions for clean units become effective in the Kentucky SIP, the owner or operator shall apply for clean unit designation at the time the control technology is installed.

(b) Requalifying as a clean unit. An emissions unit may requalify as a clean unit after the original clean unit designation expires or is lost according to provisions in subsections (8) and (7) of this section or under clean unit provisions in Section 20 of this administrative regulation.

1. The owner or operator shall obtain a new permit or permit revision pursuant to subsections (3) and (7) of this section and 401 KAR 52:020 that demonstrates the emissions units control technology is achieving a level of emissions control comparable to current-day BACT.

2. The emissions unit shall meet the requirements of subsections (2)(a)(1) and (2) of this section.

(c) Demonstrating control effectiveness comparable to BACT. The owner or operator shall demonstrate that the emissions unit's control technology is comparable to BACT under the provisions of either paragraph (a) or (b) of this subsection.
(a) Comparison of the control technology to previous BACT and LAER determinations.

1. An emissions unit's control technology shall be presumed to be comparable to BACT if:

a. The control technology achieves an emissions limitation that is equal to or better than the average of the emissions limitation achieved by all the sources for which a BACT or LAER determination has been made within the preceding five (5) years and entered into the RACT/BACT/LAER Clearinghouse; and

b. Application of the BACT or LAER control technology to the emissions unit is technically feasible.

2. The cabinet shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period:

a. To determine the accuracy of any presumptive determination that the control technology is comparable to BACT; and

b. To consider any additional BACT or LAER determinations of which the cabinet is aware.

(b) The substantially-as-effective test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT pursuant to this paragraph. The cabinet:

1. Shall consider the evidence on a case-by-case basis that an owner or operator, and any other person during the public participation process, provides to the cabinet to demonstrate if the emissions unit's control technology is substantially as effective as BACT:

   a. The BACT requirements that applied at the time the control technology was installed; or

   b. The current-day BACT requirements.

2. Emissions units with control technologies installed after provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed after the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to:

   a. The BACT requirements that applied at the time the control technology was installed; or

   b. The current-day BACT requirements.

(c) Time of comparison.

1. Emissions units with control technologies installed before provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed before the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to:

   a. The BACT requirements that applied at the time the control technology was installed; or

   b. The current-day BACT requirements.

2. Emissions units with control technologies installed after provisions for clean units are effective in the Kentucky SIP. The owner or operator of an emissions unit for which control technology is installed after the provisions regarding clean units are effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved by the emissions unit's control technology is comparable to:

   a. The BACT requirements that applied at the time the control technology was installed; or

   b. The current-day BACT requirements.

(d) Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be the later of:

   (a) The date that the permit or permit revision required by subsection (6) of this section is issued; or

   (b) The date that the emissions unit's air pollution control technology is placed into service.

3. Clean unit expiration. The date the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be determined according to this subsection.

(a) For an emissions unit with a clean unit designation based on a demonstration by the owner or operator that the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, the clean unit designation shall expire ten (10) years from the date the unit's control technology was installed.

(b) For all other emissions units, the clean unit designation shall expire ten (10) years from the effective date of the clean unit designation.

(c) The clean unit designation shall expire at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (8) of this section.

4. Procedures for designating emissions units as clean units.

(a) The cabinet shall designate an emissions unit a clean unit by issuing a permit or permit revision under 401 KAR Chapter 52, including requirements for public notice of the proposed clean unit designation and opportunity for public comment, and

(b) The permit or permit revision shall meet the requirements of subsection (7) of this section.

5. Required permit content. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which the clean unit designation applies;

(b) The effective date of clean unit designation.

1. If the effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revisions shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and

2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the Title V permit at the first opportunity the permit is opened, but not later than the next renewal.

(c) The expiration date of clean unit designation:

1. If the expiration date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the expiration date;

2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and

3. If originally absent from the Title V permit, the expiration date shall be added to the Title V permit at the first opportunity the permit is opened, but not later than the next renewal;

(d) All emissions limitations and work practice requirements adopted in conjunction with emissions limitations necessary to assure the control technology continues to achieve an emissions limitation comparable to BACT and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT;

(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (8) of this section; and

(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so pursuant to subsection (8) of this section.

6. Maintaining the clean unit designation.

(a) The owner or operator shall conform to the provisions of this subsection to maintain clean unit status.

1. To ensure that the control technology continues to achieve emissions control comparable to BACT, the clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with those that are comparable to BACT, which are recorded in the source's major NSR permit or permit revisions and subsequently reflected in the Title V permit that designates the unit as a clean unit.

2. The owner or operator shall not make a physical change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to BACT.

3. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation.

4. The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.

5. These requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one (1) pollutant
shall only affect the clean unit designation for that pollutant.

9. Netting at clean units.
   (a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis, unless:
      1. Such use occurs before the date the clean unit provisions are effective in the Kentucky SIP or after the clean unit designation expires; or
      2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.
   (b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation if:
      1. The unit reduces emissions below a level that qualified the unit as a clean unit; and
      2. The reductions are surplus, quantifiable, and permanent.
   (c) For generating offsets, reductions shall also be federally enforceable.
   (d) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

10. Effect of area redesignation on clean units.
   (a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.
   (b) If an existing clean unit designation expires or is lost, the unit shall qualify as a clean unit according to the requirements that are currently applicable in the area, regardless of the area's original attainment status during the previous designation period.

Section 22. PCP Exclusion Procedural Requirements. For a project to qualify for a pollution control project (PCP) exclusion, an owner or operator shall comply with the provisions of this section.

1. To request a PCP designation for a project the owner or operator shall:
   (a) Submit a notice to the cabinet before beginning actual construction for a project that is listed in the definition for "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); or
   (b) Submit an application for a permit or permit revision and obtain approval to use the PCP exclusion from the cabinet according to subsection (5) of this section for a project that is not listed in the definition at 401 KAR 51:001, Section 1(188)(a) to (f).

2. The owner or operator for all projects that rely on the PCP exclusion shall perform:
   (a) An environmentally-beneficial analysis.
      1. The environmental benefit from the emissions reductions of pollutants regulated under 42 U.S.C. 7401 to 7471a (Clean Air Act) shall be greater than the increment of emissions increases in pollutants regulated under the Act and
      2. A statement that the project is implementing a technology from those listed in 401 KAR 51:001, Section 1(188)(a) to (f) shall satisfy the requirement in subparagraph 1 of this paragraph.
   (b) An air quality analysis. The emissions increases from the project shall not:
      1. Cause or contribute to a violation of any national ambient air quality standard or PSD increment or
      2. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.
   (c) Content of notice or application for a permit or permit revision.
      The owner or operator shall include the following information in the notice or application for a permit or permit revision submitted to the cabinet for a PCP.
      (a) A description of the project;
      (b) The potential emissions increases and decreases of any pollutant regulated under the Act and the projected emissions increases and decreases using the methodology in Section 1(4) of this administrative regulation that will result from the project;
      (c) A copy of the environmentally-beneficial analysis required by subsection (2)(a) of this section;
      (d) A description of all methods, including monitoring and recordkeeping, that shall be used on an ongoing basis to demonstrate that the project is environmentally beneficial and sufficient to meet the applicable requirements of 401 KAR Chapter 52;
      (e) A certification that the project shall be designed and operated in a manner that is consistent with:
         1. The proper industry and engineering practices;
         2. The environmentally-beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;
         3. The information submitted in the notice or permit application; and
         4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy; and
      (f) Demonstration that the PCP shall not have an adverse air quality impact.
      The demonstration requirement may be satisfied with modeling, screening level modeling results, a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise as required by subsection (2)(b) of this section, or another method approved by the cabinet and
   (g) An air quality impact analysis shall not be required for any pollutant that will not experience a significant emissions increase from the project.

3. Notice process for listed projects. The owner or operator:
   (a) May begin actual construction of a PCP project immediately after notice is sent to the cabinet for projects listed in the definition of "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); and
   (b) Shall respond to any requests by the cabinet for additional information necessary to evaluate the suitability of the project for a PCP exclusion.

4. Permitting process for unlisted projects.
   (a) The owner or operator shall begin actual construction of a PCP that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f) until the cabinet approves and issues a permit or permit revision for the project pursuant to 401 KAR 52:020. These procedures shall include the cabinet providing the public with:
      1. Notice of the proposed approval;
      2. Access to the environmentally-beneficial analysis and the air quality analysis; and
      3. At least a thirty (30) day period for the public and the U.S. EPA to submit comments.
   (b) The cabinet shall address all material comments received by the end of the comment period before taking final action on the permit or permit revision.

5. Operational requirements. Upon installation of a PCP, the owner or operator shall comply with the requirements of this subsection.
   (a) General duty. The owner or operator shall operate the PCP in a manner that is consistent with:
      1. Proper industry and engineering practices;
      2. The environmentally-beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;
      3. Information submitted with the notice or application for a permit or permit revision by subsection (3) of this section; and
      4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy.
   (b) Recordkeeping to prove that the PCP is operated consistently with the general duty requirements in paragraph (a) of this subsection, the owner or operator shall maintain copies on site of:
      1. The environmentally-beneficial analysis;
      2. The air quality impacts analysis; and
      3. The monitoring and other emissions records.
   (c) Permit requirements. The owner or operator shall comply with all provisions in a permit issued under 401 KAR 52:020 related to use and approval of the PCP exclusion.

   1. Emissions reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion.
   2. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if such reductions are surplus, quantifiable, and permanent.
   3. For generating offsets, the reductions shall be federally en-
forceable; and
4. For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

Section 23. Plant-wide Applicability Limit Provisions. The cabinet may approve the use of an additive PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.
(a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project:
   1. Shall not be considered a major modification for the PAL pollutant;
   2. Shall not have to be approved through Kentucky's major NSR program; and
   3. Shall not be subject to the provisions of Section (b) of this article concerning restrictions on relaxing enforceable emission limitations that a major stationary source used to avoid applicability of the major NSR program.
(b) Except as provided under subparagraph (1)(3) of this section, a major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.
(2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:
(a) A list of all emissions units at the source designated as small, significant or major, based on their potential to emit;
(b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;
(c) Calculations of the baseline actual emissions for the emissions units with supporting documentation, including emissions associated with startup, shutdown and malfunction; and
(d) The calculation procedures and assumptions of the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (2)(a) of this section.
(3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.
(a) The PAL shall be the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, collected monthly; and
2. For each month during the first twelve (12) months of establishing a PAL, the owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, collected monthly; and
(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.
(d) Each PAL shall regulate emissions of only one (1) pollutant;
(e) Each PAL shall have a effective period of ten (10) years;
(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (15) of this section for each emissions unit under the PAL through the PAL effective period.
(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii), unless:
1. The level of the PAL is reduced by the amount of the emissions reductions; and
2. The reductions will be creditable in the absence of the PAL.
(h) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52:100. The cabinet shall:
1. Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and
2. Address all material comments before taking final action on a PAL permit or permit revision.
(i) Setting the ten (10) year PAL level.
(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51:001, Section (3)(2) or under the Act, whichever is lower.
(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.
(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.
(d) Emissions associated with units that were permanently shutdown after the chosen twenty-four (24) month period shall be subtracted from the PAL level.
(e) The PAL permit shall contain all the requirements of subsection (6) of this section.
(f) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.
(g) The cabinet shall specify a reduced PAL level in the PAL permit to become effective or the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.
(h) Contents of the PAL permit. The PAL permit shall contain the following information:
1. The PAL pollutant and the applicable source-wide emissions limitation in tons per year;
2. The PAL permit effective date and the expiration date of the PAL or PAL effective period;
3. Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;
4. A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns and malfunctions;
5. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection (8) of this section;
6. If the calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (3) of this section;
7. A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12)(a) of this section;
8. A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format or another acceptable form approved by the cabinet;
9. A requirement for the owner or operator to submit the reports required under subsection (13) of this section by the required deadlines; and
10. Other requirements necessary to implement and enforce the PAL.
(7) PAL effective period and reopening of a PAL permit.
(a) A PAL effective period shall be ten (10) years.
(b) The Cabinet shall reopen a PAL permit to:
1. Correct typographical or calculation errors made in setting the PAL;
2. Reflect a more accurate determination of emissions used to establish the PAL;
3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or
4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.
(c) The cabinet may reopen the PAL permit, during the PAL effective period, if it finds:
1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;
2. Reduce the PAL consistent with any other requirement;
   a. Enforceable as a practical matter;
   b. Imposed on the major stationary source under the SIP; and
3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to:
   a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or
   b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.
(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.
(8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply.
(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitations under a revised permit established as follows:
1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among the emissions units that existed under the PAL.
   a. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.
   b. If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted.
2. The cabinet shall decide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.
3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.
(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems other than CEMS, CEEMS, PEMS, or CPMS to demonstrate compliance with the allowable emissions limitations.
(c) The source shall continue to comply with a source-wide, multiunit emissions cap equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.
(d) A major modification at the major stationary source shall be subject to major NSR requirements.
(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 16(4) of this administrative regulation.
(9) Renewal of a PAL.
(a) Public participation requirements.
1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.
2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.
3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.
(b) Application deadline.
1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.
2. The deadline for application submission shall ensure that the permit shall not expire before the permit is renewed.
3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.
(c) Application requirements. The application to renew a PAL permit shall contain:
1. The information required in subsection (2) of this section;
2. A proposed PAL level;
3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and
4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.
(d) PAL adjustment.
1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward if a source's potential to emit has declined below the PAL level.
2. The cabinet may renew the PAL at the same level as the current PAL if the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is equal to or greater than eighty (80) percent of the current PAL level, unless the sum is greater than the source's potential to emit.
3. If the sum of the baseline actual emissions for all emissions units at the source plus an amount equal to the significant level is less than eighty (80) percent of the current PAL level, the cabinet may set the PAL at a level that is determined to be:
   a. More representative of the source's baseline actual emissions;
   b. Appropriate considering the following factors:
      (i) Air quality needs;
      (ii) Advances in control technology;
      (iii) Anticipated economic growth in the area of the source;
      (iv) The cabinet's goal of promoting voluntary emissions reductions;
   (v) Cost effective emissions control alternatives; and
   (vi) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.
4. The cabinet shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection (10) of this section.
(c) The PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever comes first. If:
1. The compliance date for a state or federal applicable requirement that applies to the source occurs during the PAL effective period; and
2. The cabinet has not already adjusted for such requirement:
   (a) Application procedures. The owner or operator of the major stationary source shall submit a complete application for a PAL increase that includes the following:
      1. Identification of the emissions units contributing to the increase in emissions for the PAL major modification;
      2. Demonstration that the increased PAL, as calculated in paragraph (c) of this subsection, does not exceed the PAL.
         a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be deter-
mined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years.

b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the highest level of BACT or LAER for that emissions unit.

3. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirements. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained.

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirements. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plant-wide emissions of the PAL pollutant in terms of mass per unit of time.

2. A monitoring system authorized for use in the PAL permit shall be:
   a. Approved by the cabinet; and
   b. Based on sound science and meet generally acceptable scientific procedures for data quality and manipulation.

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection.

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

1. Mass balance calculations for activities using coaotns or solvents;

2. CEMS;

3. CPMS or PEMS; and

4. Emission factors.

(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coaotns or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

2. If the PAL pollutant cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit; and

3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable performance specifications found in 40 C.F.R. Part 60, Appendix B; and

2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and

2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(f) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

2. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

3. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of PAL permit issuance, unless the cabinet determines that testing is not required.

(g) Source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, as an alternative to the requirements of paragraphs (c) to (g) of this subsection, at the time of permit issuance the cabinet shall:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points; and

2. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically-validated means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and

2. Each annual certification of compliance pursuant to Title V and the data used to certify compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the cabinet in accordance with 401 KAR Chapter 52 that meet the following requirements:

(a) Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each re-

(2) The documents incorporated by reference in subsection (1) of this section are available for public inspection and copying (subject to copyright laws) at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:
(a) Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-1403, (502) 573-3382;
(b) Ashland Regional Office, 1560 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 926-8265;
(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;
(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;
(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41770, (606) 435-6022;
(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 878-0117;
(g) Owensboro Regional Office, 3032 Alvey Park Drive, Suite 700, Owensboro, Kentucky 42303, (270) 867-7304;
(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 868-8468;
(i) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358.

[Section 21. Reference Material. (1) Incorporation by Reference. The following documents are incorporated by reference:
(b) The manual is available under Order No. PB 87-100942 from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, and phone (703) 487-4660.
(c) Documents from the Code of Federal Regulations:
(2) The documents incorporated by reference in subsection (1) of this section are available for public inspection and copying (subject to copyright law) at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:
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(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 868-8468.]

<table>
<thead>
<tr>
<th>POLLUTANT</th>
<th>EMISSIONS RATE</th>
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<tbody>
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- 2206 -
VOLUME 30, NUMBER 10 – April 1, 2004

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Maximum Allowable Increase (Micrograms-per-cubic-meter)</th>
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<tbody>
<tr>
<td>Lead</td>
<td>1.0 µg/m³, 3-month average</td>
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<tr>
<td>Mercury</td>
<td>0.25 µg/m³, 24-hour average</td>
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<tr>
<td>Beryllium</td>
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<tr>
<td>Fluorides</td>
<td>0.25 µg/m³, 24-hour average</td>
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<tr>
<td>Vinyl chloride</td>
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<tr>
<td>Hydrogen-sulfide</td>
<td>0.2 µg/m³, 1-hour average</td>
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<tr>
<td>Total-reduced-sulfur</td>
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<tr>
<td>Reduced-sulfur compounds</td>
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Section 26. Ambient Air Increments for Class I Variances.

<table>
<thead>
<tr>
<th>Particulate Matter</th>
<th>Maximum Allowable Increase (Micrograms-per-cubic-meter)</th>
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<tbody>
<tr>
<td>PM$_{10}$, annual arithmetic mean</td>
<td>17</td>
</tr>
<tr>
<td>PM$_{2.5}$, 24-hour maximum</td>
<td>30</td>
</tr>
<tr>
<td>Annual arithmetic mean</td>
<td>20</td>
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<tr>
<td>24-hour maximum</td>
<td>91</td>
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<tr>
<td>3-hour maximum</td>
<td>325</td>
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Section 26. Ambient Air Increments for Presidential or Gubernatorial SO$_{2}$ Variances.

<table>
<thead>
<tr>
<th>Nitrogen Dioxide</th>
<th>Maximum Allowable Increase (Micrograms-per-cubic-meter)</th>
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<tbody>
<tr>
<td>Annual arithmetic mean</td>
<td>25</td>
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</tbody>
</table>

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 3, 2004
FILED WITH LRC: March 12, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 30, 2004, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 23, 2004, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation.

A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 3, 2004. Send written notification of intent to be heard at the hearing or written comments on the proposed administrative regulation to the contact person. 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: Millie Ellis, Environmental Technologist III, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3787.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Millie Ellis
(1) Provide a brief summary of:
(a) What this administrative regulation does: The administrative regulation provides for the prevention of significant deterioration of ambient air quality (PSD). It applies to major stationary sources and major modifications constructing in areas that are designated as attainment or unclassified for the specified pollutants. To receive approval to construct, a source that is subject to this admin-

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<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Air Quality Level</th>
<th>Averaging-Time</th>
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</thead>
<tbody>
<tr>
<td>Carbon-monoxide</td>
<td>575 µg/m³</td>
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<tr>
<td>Nitrogen-dioxide</td>
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<td>annual average</td>
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<tr>
<td>Particulate matter</td>
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<td>24-hour average</td>
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<td>Sulfur-dioxide</td>
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<td>24-hour average</td>
</tr>
<tr>
<td>Ozone</td>
<td>No detection limit</td>
<td>8-hour average</td>
</tr>
</tbody>
</table>

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- 2207 -
administrative regulation must show that it will not cause emissions to increase by set incremental amounts; that it will not cause or contribute to a violation of a National Ambient Air Quality Standard (NAAQS); and that it will use the best available control technology (BACT) to control its emissions.

(2) The necessity of this administrative regulation: The administrative regulation contains a preconstruction review program for the construction and modification of any major stationary source of air pollution in an attainment or unclassified area, as mandated under 42 U.S.C. 7470 to 7479 (Part C to Subpart 1 of the Clean Air Act). The administrative regulation is necessary in order to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect visibility and other Air Quality Related Values (AQRVs) in national parks and other natural areas of special concern; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of all the consequences of such a decision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. Once major new source review is triggered under this administrative regulation, the source must, among other things, install best available control technology and conduct modeling and monitoring as necessary. KRS 224.10-100/00 mandates the cabinet to promulgate existing major stationary sources with regulatory certainty.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 49 entities are currently subject to the administrative regulation. Entities potentially affected by the proposed amendment to the administrative regulation include major new stationary sources that construct in areas designated attainment or unclassified, and those that have major modifications in the future. While affected sources will be in all industry groups, the majority of sources potentially affected by the amendment are expected to be in the following groups: electric utilities, petroleum refining, chemical processes, natural gas transport, pulp and paper mills, paper mills, automobile manufacturing, and pharmaceuticals.

(b) The necessity of the amendment to the administrative regulation: The amendment includes changes in the PSD applicability requirements for modifications to allow sources more flexibility to respond to rapidly changing markets and to plan for future investments in pollution control and prevention technologies. The changes are intended to provide greater regulatory certainty, administrative flexibility, and permit streamlining, while ensuring the current level of environmental protection and benefit derived from the PSD program.

(5) Provide an estimate of whether the amendment will be used to implement this administrative regulation.

(a) Initially: The division will not incur any additional costs to implement the administrative regulation.

(b) On a continuing basis: There will not be any continuing costs associated with the implementation of the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's operating budget will be used to implement and enforce the 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 is necessary to implement the proposed amendment to the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The administrative applies to major stationary sources or major modifications, which are defined to be sources that have a potential to emit 100 to 250 tons per year or more of a regulated NSR pollutant, and modifications that result in a significant net emissions increase.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 50 C.F.R. 51.166 as amended at 67 Fed. Reg. 80186 (December 31, 2002).

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires any source described in Section 1 of the proposed administrative regulation to show that construction or modification of the source will not cause emissions to increase by set incremental amounts, and that the source's emissions will not cause or contribute to a violation of a NAAQS. The source must also show that best available control technology (BACT) will be used to control emissions.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments to the administrative regulation are identical to the amendments to the federal regulation and will impose no more stringent requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter
standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation would affect any unit, part, or division of local government operating a unit that meets the applicability determination of Section 1 of the administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. The most likely aspects of service of local government that are potentially affected by the administrative regulation are electric utilities and natural gas transport.

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 made, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): Although it cannot be quantified, this administrative regulation is designed to result in a reduction in costs to the regulated community.

Other Explanation: There is no further explanation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality (Amendment)

401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

RELATES TO: KRS 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 51, Subpart I, 51.165, 51.165(g), 52.21, 52.21(g), 52.21(h), 60, 61, 81, Subpart D, 81.318. [June 28, 1988 Federal Register (53 FR 27747)] 42 U.S.C. 7401-7826, 7407(d)(1)(A)(i), (ii), and (iii), 7410 STATUTORY AUTHORITY: KRS 224.10-100, 40 C.F.R. 51.165, 42 U.S.C. 7401-7671a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the [Natural-Resources-and Environmental and Public Protection Cabinet] to promulgate [prescribe] administrative regulations for the prevention, abatement and control of air pollution. This administrative regulation establishes requirements for the construction or modification of stationary sources within, or impacting upon, areas where the national ambient air quality standards have not been attained. The provisions of this administrative regulation are neither different nor more stringent than the federal regulation 40 C.F.R. 51.165.

Section 1. Applicability. This administrative regulation shall apply to new major sources or major stationary source or any project that is a major modification, at an existing major stationary source, which commences construction after September 22, 1987, and locate in or impacts upon an area designated nonattainment under 42 U.S.C. 7407(d)(1)(A)(i).

(1) The provisions of this administrative regulation relating to visibility protection shall also apply to a major source or a major modification in nonattainment areas that potentially have an impact on visibility in a mandatory Class I federal area.

(2) Applicability tests for projects. Except as provided in subsections (3) or (4) of this section, a project shall be a major modification for a regulated NSR pollutant only if the project causes a significant emissions increase and a significant net emissions increase, as provided in paragraphs (a) and (b) of this subsection.

(a) Prior to beginning actual construction, the owner or operator shall first determine if a significant emissions increase will occur for the applicable type of unit being constructed or modified according to subparagraphs 1 to 4 of this paragraph.

1. Actual-to-projected actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

2. Actual-to-potential test for projects that involve only construction of new emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the potential to emit from each new emissions unit following completion of the project equals or exceeds the significant amount for that pollutant.

3. Emissions test for projects that involve clean units. For a project that will be constructed and operated at a clean unit as provided in Sections 11 and 12 of this administrative regulation, without causing the unit to lose its clean unit designation, an emissions increase shall not be deemed to occur.

4. Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant shall be projected to occur if the sum of the emissions increases for each emissions unit, using the methods specified in subparagraphs 1 to 3 of this paragraph as applicable for each emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Prior to beginning actual construction and after completing the applicable test in paragraph (a) of this subsection, the owner or operator shall determine for each regulated NSR pollutant if a significant net emissions increase will occur pursuant to 401 KAR 51:001, Section 1(146).

(3) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major stationary source, the owner or operator of the major stationary source shall comply with the applicable requirements of Section 14 of this administrative regulation.

(4) An owner or operator undertaking a pollution control project (PCP) shall comply with Section 13 of this administrative regulation.

(5) Definitions. As used in this administrative regulation, terms not defined shall have the meaning given them in 401 KAR 51:001 or, for terms relating to the protection of visibility, in 401 KAR 51:017.

(a) "Actual emissions" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with paragraphs (a) to (i) of this subsection.

(b) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal-source operation. The cabinet shall allow the use of a different time period upon determination that it is more representative of normal-source operation. Actual emissions shall be calculated using the emission unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The cabinet may presume that source-specific allowable emissions for the emission unit are equivalent to the actual emissions of the emission unit.

(d) For an emission unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emission unit on that date.

(6) Adverse impact on visibility means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Class I area.

(8) Allowable emissions means the emissions rate calculated using the maximum-rated capacity of the source (unless the source is subject to state and/or federal enforceable permit conditions which limit operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable new source performance standards set forth in Title 40, Chapter 57 and 59, 40 CFR Parts 60 and 61;

(b) Any other state and/or federal approved regulatory emission limitations, including those with a future compliance date;

(c) The emission rate specified as a state and/or federal enforceable permit condition, including those with a future compliance date.

(8) Begin actual construction means initiation of physical on-site construction activities on an emission unit which are of a permanent nature. Activities include, but are not limited to, installation.
of building supports and foundations, laying of underground pipeline, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(6) "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of a vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group; i.e., they have the same two (2) digit code, as described in the Standard Industrial Classification Manual, 1987, as incorporated by reference in Section 21 of 401 KAR 51-017.

(7) "Classification date" means September 22, 1982.

(8) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and has either:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into agreements or contractual obligations which cannot be cancelled or modified without substantial loss to the owner or operator to undertake a program of actual construction of the source to be completed within a reasonable time.

(9) "Construction" means a physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emission unit which would result in a change in actual emissions.

(10) "Emission unit" means a part of a stationary source which emits or would have the potential to emit a pollutant subject to regulation under 42 U.S.C. 7401-7626.

(11) "Federal land manager" means, with respect to lands in the United States, the secretary of the department with authority over those lands.

(12) "Federally enforceable" means all limitations and conditions which are enforceable by the U.S. Environmental Protection Agency (U.S. EPA), including those requirements developed pursuant to 40 C.F.R. Parts 60 and 61, requirements within an applicable State Implementation Plan, and a permit requirement established pursuant to 40 C.F.R. 52.21, or under regulations approved pursuant to 40 C.F.R. Part 51, Subpart I, including operating permits issued under a U.S. EPA approved program incorporated into the State Implementation Plan, which expressly requires adherence to a permit issued under the program.

(13) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(14) "Lowest achievable emissions rate" means, for a source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation contained in an implementation plan of a state for the class or category of stationary source, unless the owner, operator, or proposed stationary source demonstrates that the limitation is not achievable.

(b) The most stringent emissions limitation achieved in practice by the class or category of stationary source. This limitation, when applied to a major modification, means the lowest achievable emissions rate for the new or modified emission unit within the stationary source. The application of this term shall not permit a proposed new or modified stationary source to emit a pollutant in excess of the amount allowable under an applicable standard under Title 40, Chapters 57 and 58, and 40 C.F.R. Parts 60 and 61.

(15) "Major modification" means a physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of a pollutant subject to regulation under 42 U.S.C. 7401-7626.

(a) A net increase in the emissions of volatile organic compounds shall be significant for ozone.

(b) A physical change in or change in the method of operation shall not include:

1. Routine maintenance, repair, and replacement;

2. Use of alternative fuel or raw material by reason of an order or by reason of a natural gas curtailment plan in effect under a federal act.

3. Use of an alternative fuel at a steam-generating unit to the extent that the fuel is generated from municipal solid waste.

4. Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of commencing before December 21, 1976, unless the change would be prohibited under a permit condition established after December 21, 1976, pursuant to 40 C.F.R. 52.21 or pursuant to 401 KAR 51-017 or under regulations established pursuant to 40 C.F.R. 51.185; or

(b) The source is approved to use under a permit issued under this administrative regulation.

5. An increase in hours of operation or in production rate, unless the change is prohibited under a permit condition that was established after December 21, 1976, pursuant to 40 C.F.R. 52.21 or pursuant to 401 KAR 51-017 or under regulations established pursuant to 40 C.F.R. 51.185;

6. A change in ownership at a stationary source.

(16) "Major stationary source" means:

(a) Except as provided in paragraph (b) of this subsection, a stationary source that emits, or has the potential to emit, 100 tons per year or more of a pollutant subject to regulation under 42 U.S.C. 7401-7626.

(b) For ozone nonattainment areas, a stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit the following:

1. For areas classified as serious, fifty (50) tons per year or more of volatile organic compounds (VOCs) or nitrogen oxides (NOx);

2. For areas classified as severe, twenty-five (25) tons per year or more of VOCs or NOx;

3. For areas classified as extreme, ten (10) tons per year or more of VOCs or NOx.

(c) A physical change that would occur at a stationary source not qualifying under paragraphs (a) or (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(d) A source that is major for VOCs shall be considered major for ozone.

(17) "Mandatory Class I federal area" means an area identified in 40 C.F.R. 81, Subpart D, where the Administrator of the U.S. EPA, in consultation with the Secretary of the United States Department of the Interior, has determined visibility to be an important value.

(18) "Necessary preconstruction approval or permits" means the permits or approvals required under the regulations of Title 40, Chapters 60 to 63.

(19) "Net emissions increase" means the amount by which the sum of paragraphs (a) and (b) of this subsection exceeds zero:

(a) An increase in actual emissions from a particular physical change or changes in method of operation at a stationary source; and

(b) Another increase or decrease in actual emissions at the source that is contemporaneous with the particular change and is otherwise creditable.

(c) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date which is ten (10) years before construction on the particular change commences, but not before December 21, 1976, and the date that the increase from the particular change occurs.

(d) An increase or decrease in actual emissions shall be creditable only if the cabinet has not relied on it in issuing a permit for the source under this administrative regulation, which permit is in effect when the increase in actual emissions from the particular change occurs.

(e) An increase in actual emissions shall be creditable only to the extent that the new level of actual emissions exceeds the old level.
(f) A decrease in actual emissions shall be creditable only to the extent that:

1. The level of actual emissions or the level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
2. It is state and federally enforceable, and after the time that actual emissions on the particular change begins;
3. The plant has not relied on it in issuing a permit or in demonstrating attainment or reasonable further progress; and
4. It has the same qualitative significance for public health and welfare as contributed to the increase from the particular change.

(g) Any increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. A replacement unit that requires shutdown becomes operational only after a reasonable shutdown period, not to exceed 180 days.

(20). "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical or operational design. A physical plant is defined as the design and structural conditions of the facility. The facility includes all structures, equipment, and storage that contribute to the potential to emit the source.

(21). "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are sufficient, in the judgment of the cabinet and the U.S. EPA, to provide for attainment of the applicable ambient air quality standard by the date specified in 401 KAR 51:010, Section 2.

(22). "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification and not from the major stationary source or major modification itself. For this administrative regulation, secondary emissions shall be specific, well defined, and quantifiable, and shall impact the same general area as the stationary source or major modification which causes the secondary emissions. Secondary emissions include emissions from an off-site support facility that would otherwise not be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions shall not include emissions which come from a mobile source, e.g., the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(23). "Significant" means, in reference to a net emissions increase, the potential of a source to emit a pollutant, a rate of emissions that would exceed or be equal to or exceed the rates given in Section 12 of this administrative regulation.

(24). "State Implementation Plan" means the most recently prepared plan or revision required by 42 U.S.C. 7410 which has been submitted by the cabinet and approved by the U.S. EPA.

(25). "Stationary source" means a building, structure, facility or installation that emits or may emit an air pollutant subject to regulation under 42 U.S.C. 7407(d).

(26). "Visibility impairment" means a humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

Section 2, Applicability. (1) This administrative regulation shall apply to new major sources or major modifications commenced after the classification date defined in Section 16 of this administrative regulation and that will locate in or impact upon an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i). Area designations are contained in 40 C.F.R. 81-316.

(2) The provisions of this administrative regulation relating to visibility protection shall also apply to major sources or major modifications in nonattainment areas which potentially have an impact on visibility in a mandatory Class I federal area.

Section 2, Initial Screening Analyses and Determination of Applicable Requirements. (1) Review of all sources for emissions limitation compliance.

(a) The cabinet shall examine each proposed major new source and proposed major modification to determine if the source or modification will meet all applicable emissions [emission] requirements in the Kentucky State Implementation Plan (SIP) and 40 C.F.R. Parts 60 and 61 (Title 40, Chapters 60 to 63).

(b) If the cabinet determines from the application and all other available information that the proposed source or modification will not meet the applicable emissions [emission] requirements, the permit to construct shall be denied.

(2) Review of specified sources of air quality impact.

(a) [In addition.] The cabinet shall determine if a proposed [whether the] major stationary source or major modification will [would] be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i) for a pollutant for which the stationary source or modification is major.

(b) If a designated nonattainment area is projected to be an attainment area as part of an approved control strategy by the new source start-up date, offsets shall not be required if the new source will [would] not cause a new violation.

(3) Fugitive emissions [emission] sources. Sections 4 and 10 [6 and 11] of this administrative regulation shall not apply to a source or modification that will [would] be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to the following categories:

(a) Coal cleaning plants []; thermal dryers [ ];
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants [ ]; furnace process [ ];
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers, [ ]; or combination of fossil-fuel boilers, [ ]; totaling more than 250 million BTUs per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
(aa) Another stationary source category which, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412 [Title 40, Chapters 67 and 66, or 40 C.F.R. Parts 60 and 61].

Section 3, [4.] Sources Located in Designated Attainment or Unclassifiable Areas that Will Cause or Contribute to a Violation of a National Ambient Air Quality Standard. (1) This section shall apply only to a new major stationary source or a new major modification that [sources or new major modifications which] will locate in designated attainment or unclassifiable areas, pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) or (iii), if the source or modification will [would] cause impacts that [which] exceed the significance levels as listed in the table in this subsection, [specified in Section 33 of this administrative regulation] at a locality that does not or will [would] not meet the national ambient air quality standards.
(2) Sources to which this section applies shall meet the requirements of Section 4(1) [5(4)], (2) and (4) of this administrative regulation and—[However, the sources] may be exempt from Section 4(3) [6(3)] of this administrative regulation.

(3) For sources of sulfur dioxide (SO₂), particulate matter, and carbon monoxide (CO), the determination that [of whether] a new major source or major modification will cause or contribute to a violation of a national ambient air quality standard shall be made on a case-by-case basis using the source's allowable emissions in an approved atmospheric simulation model listed in 40 C.F.R. appendix W, "Guideline on Air Quality Models" (pursuant to 401 KAR 50:040).

(4) For sources of NOx, the initial determination that [of whether] a new major source or major modification will [would] cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide (NO₂) shall be made using an approved atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO₂ by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

(5) For ozone, sources of VOCs locating outside a designated ozone nonattainment area shall be presumed to have no significant impact on the designated nonattainment area. If ambient monitoring indicates that the area of source location is in fact nonattainment, the source shall be permitted under the applicable provisions of this administrative regulation and 401 KAR 52:020 until the area is designated nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(ii).

(6) The determination that [as to whether] a new major source or major modification will [would] cause or contribute to a violation of a national ambient air quality standard shall be made as of the start-up date.

(7) Applications for major new sources and major modifications locating in attainment or unclassifiable areas, the operation of which will [would] cause a new violation of a national ambient air quality standard but will [would] not contribute to an existing violation, may be approved only if the following conditions are met:

(a) The new source shall:
1. [is required to] Meet an emissions [emission] limitation;
2. Meet [a, or a] design, operational or equipment standard, [i] or
3. Control existing sources [are controlled], so that the new source will not cause a violation of a national ambient air quality standard.

(b) The new emissions [emission] limitations for the new and existing sources affected shall be state and federally enforceable in accordance with Section 6 [7] of this administrative regulation.

Section 4, Sources Located in a Designated Nonattainment Area [5, Conditions for Approval]. This section shall apply to a new major stationary source or major modification that will [sources or major modifications—which would] be constructed in an area designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(ii) for a pollutant for which the stationary source or modification is major. Approval to construct may be granted only if the following conditions of this section are met. [i]

(1) The new major source or major modification shall be required to meet an emissions limitation that [emission limitation which] specifies the lowest achievable emissions rate (LAER) [emission rate] for the source.

(2) The applicant shall demonstrate that all existing major sources owned or operated by the applicant, [i] or an entity controlling, controlled by, or under common control with the applicant, [i] in the Commonwealth of Kentucky [Commonwealth] are in compliance with all applicable emissions [emission] limitations and standards specified in Title 401, Chapters 50 to 63, and 40 C.F.R. Parts 60 and 61 and 42 U.S.C. 7401-7626, or are in compliance with an expeditious state or federally enforceable compliance schedule or a court decree establishing a compliance schedule.

(3a) Except for (in-the-case-of) VOCs or NOx emissions, emissions from existing sources in the affected area of the proposed new major source or modification, [i] whether or not under the same ownership, [i] shall be reduced, [i] offset, [i] so that there will be reasonable further progress toward attainment of the applicable national ambient air quality standard (NAAQS). Only those transactions in which the emissions being offset are from the same criteria pollutant category shall be accepted.

(b) The ratio of total emissions [emissions] reductions of VOCs or NOx to total increased emissions of the same air pollutant shall be at least the ratio indicated for the following ozone nonattainment area classifications:

1. For marginal nonattainment areas, at least 1.1 to 1;
2. For moderate nonattainment areas, at least 1.15 to 1;
3. For serious nonattainment areas, at least 1.2 to 1;
4. For severe nonattainment areas, at least 1.3 to 1;
5. For extreme nonattainment areas, at least 1.5 to 1.

(4) The emissions [emission] reductions shall provide a positive net air quality benefit in the affected area.

(a) Atmospheric simulation modeling shall not be required for VOCs and NOx.

(b) As excepted in Section 3(5) [4(6)] of this administrative regulation, compliance with subsection (3) of this section and Section 5(3)(e) [6(7)] of this administrative regulation shall be adequate to meet this condition.

(5) For a major stationary source or major modification locating in an area designated nonattainment with respect to that pollutant for which the proposed source or modification is major, permits issued under this administrative regulation shall specify that construction shall not commence until the U.S. EPA has approved the cabinet's plan relating to the requirements of Part D, Title 1, of 42 U.S.C. 7401-7626.

(6) The proposed major stationary source or major modification shall include in the application for a construction permit an analysis of the alternative sites, sizes, production processes, and environmental control techniques for the proposed source, which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 5, [6–Baseline for] Determining Credit for Emissions [Emission] Offsets. (1) The baseline for determining credit for emissions [emission] reductions or offsets shall be:

(a) The emissions [emission] limitations in effect at the time the application to construct or modify a source is filed; or
(b) The actual emissions of the source from which offset credit is attained if:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards for the SIP was based on actual emissions; or
2. The SIP does not contain an emissions limitation for that source or source category.

(c) Baseline actual emissions as defined in 401 KAR 51:001, Section 1(20), shall not be used for determining the baseline for emissions offsets.

(2) Credit for emissions offsets. Credit for emissions offset may be allowed for existing control that goes beyond the control required under 401 KAR Chapters 50 to 68 and existing federal regulations.

(3) General provisions for calculating offset values.

(a) Offset calculations shall be made on a pound-per-hour basis if all facilities involved in the emissions offset calculations are
operating at their maximum or allowed production rate.

(b) Offsets may be calculated on a tons-per-year basis if baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period.

(c) If the cabinet requires certain hardware controls instead of an emissions limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(d) If the emissions limitations required by the cabinet allow greater emissions than the uncontrolled emissions rate of the source, emissions offset credit shall be allowed only for control below the uncontrolled emissions rate.

(e) The owner or operator of a new or modified major stationary source shall comply with any offset requirement in effect under this administrative regulation to increase emissions of an air pollutant by:

1. Obtaining emissions reductions of the air pollutant from the same source or other sources in the same nonattainment area; or
2. From sources in another nonattainment area if:
   a. The other area is an equal or higher nonattainment classification than the area in which the source is located; and
   b. Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

(f) Calculating offsets if no applicable emissions limitation exists. If the Kentucky SIP does not contain an emissions limitation for a source or source category, the emissions offset baseline involving the source shall be actual emissions determined under actual operating conditions for the previous two (2) year period.

(g) Calculating offsets for existing fuel combustion sources.
   a. The emissions for determining emissions offset credit involving an existing fuel combustion source shall be the allowable emissions under the emissions limitation requirements of the cabinet for the type of fuel being burned at the time the new major source or major modification application is filed.
   b. If the existing source has switched to a different type of fuel at some earlier date, a resulting emissions reduction, either actual or allowable, shall not be used for emissions offset credit.
   c. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable emissions for the fuels involved shall not be allowed unless the permit is conditioned to require the use of a specified alternative control measure that will achieve the same degree of emissions reduction if the source switches back to a dirtier fuel at some later date.

(h) Calculating offsets for operating hours and source shutdowns.
   a. A source may be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if the work force to be affected has been notified in writing of the proposed shutdown or curtailment.
   b. Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emissions offset credit.
   c. If an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

(i) Banking of emissions offset credit.
   a. New sources obtaining permits by applying offsets after the effective date of this administrative regulation may bank offsets that exceed the requirements of Section 5(3) of this administrative regulation.
   b. An owner or operator of an existing source that reduces its own emissions may bank a resulting reduction beyond those required by regulation for use under this administrative regulation, even if the offsets are applied immediately to a new source permit.
   c. Banked emissions offsets may be used under the preconstruction review program required in 42 U.S.C. 7401 to 7426, as long as these banked emissions are identified and accounted for in Kentucky's control strategy.

(j) Offset credit for meeting NSPS or NESHAPs.
   a. If a source is subject to an emissions limitation established in a New Source Performance Standard (NSPS) or a National Emissions Standard for Hazardous Air Pollutants (NESHAPs) and a different emissions limitation is required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emissions offsets.
   b. The difference in emissions between NSPS or NESHAPs and other emissions limitations may not be used as offset credit.

For areas where the demonstration of attainment for the State Implementation Plan was based on actual emissions, the baseline for determining offset credit may be actual emissions. Credit for emission offset purposes may be allowed for existing control that goes beyond that required by regulations. Offset calculations shall be made on a pound-per-hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate. Offsets may be calculated on a tons-per-year basis if baseline emissions for existing sources providing the offsets are calculated using the actual annual operating hours for the previous two (2) year period. If the cabinet requires certain hardware controls in lieu of an emission limitation, baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period in conjunction with the required hardware controls.

(k) No applicable emissions limitation. If the requirements of the cabinet do not contain an emission limitation for a source or source category, the emissions offset baseline involving the source shall be actual emissions determined under actual operating conditions for the previous two (2) year period. If the emission limitations required by the cabinet allow greater emissions than the uncontrolled emission rate of the source, emission offset credit shall be allowed only for control below the uncontrolled emission rate.

(l) Combustion of fuels. The emissions for determining emission offset requirements involving an existing fuel combustion source shall be the allowable emissions under the emission limitation requirements of the cabinet for the type of fuel being burned at the time the new major source or major modification application is filed. If the existing source has switched to a different type of fuel at some earlier date, a resulting emissions reduction (either actual or allowable) shall not be used for emissions offset credit. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable emissions for the fuels involved shall not be acceptable unless the permit is conditioned to require the use of a specified alternative control measure that would achieve the same degree of emission reduction if the source switches back to a dirtier fuel at some later date.

(m) Operating hours and source shutdown. A source may be credited with emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if the work force to be affected has been notified in writing of the proposed shutdown or curtailment.

(n) Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed shall not be used for emissions offset credit.

(o) If an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one (1) year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

(p) Credit for hydrocarbon substitution. No emission offset credit shall be allowed for replacing one (1) volatile organic compound with another of lesser photochemical reactivity, unless the replacement compound is methane, ethane, 1,1,1-trichloroethane or trichlorofluoromethane.

(q) Banking of emissions offset credit. New sources obtaining permits by applying offsets after the effective date of this administrative regulation may bank offsets that exceed the requirements of
Section 5(3) of this administrative regulation. An owner or operator of an existing source that reduces its own emissions may bank a resulting reduction beyond those required by regulation for use under this administrative regulation, even if the offsets are applied immediately to a new source permit. These banked emissions offsets may be used either by the construction review program required in 42 U.S.C. 7401–7202, as long as those banked emissions are identified and accounted for in the Commonwealth's control strategy.

(5) Offset credit for meeting NSPS or NESHAPS. If a source is subject to an emission limitation established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS) in compliance with Title 401, Chapters 60 and 67 respectively, and a different emission limitation required by the cabinet, the more stringent limitation shall be used as the baseline for determining credit for emission offsets. The difference in emissions between NSPS or NESHAPS and other emission limitations may not be used as offset credit.

(6) Offsets. The owner or operator of a new or modified major stationary source shall comply with any offset requirement in effect under this section for increased emissions of an air pollutant only by obtaining emission reductions of the air pollutant from the same source or other sources in the same nonattainment area, except that the cabinet may allow the owner or operator of a source to obtain the emission reductions in another nonattainment area if:

(a) the offsets have been banked under a construction review program.
(b) the offsets are from a source with an equal or higher nonattainment classification than the area in which the source is located; and

(c) Emissions from the other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

Section 8. [7.] Administrative Procedures for Emissions Offsets. (1) Emission reductions. The necessary emission offsets may be proposed either by the owner of the proposed source or by the owner of the source that is subject to the emission reduction. The emission reduction shall be enforceable by the cabinet and the United States Environmental Protection Agency (U.S. EPA) and shall be accomplished by the startup date of the new source.

(a) If emissions [emissions] reductions are to be obtained in a state that neighbors the Commonwealth for a new source to be located in the Commonwealth, the emissions [emissions] reductions shall be enforceable by the neighboring state or local agencies and the U.S. EPA.
(b) The necessary emission offsets may be proposed by the owner of the proposed source or by the cabinet.

(2) [14] Source initiated emissions [emissions] offsets. (a) The owner or operator of a source may propose:

1. Internal emissions [emissions] offsets, which involve reductions from sources controlled by the owner; [internal-emission offsets]
2. External emissions offsets, which involve reductions from other sources [external-emission offsets], if the emissions [emissions] offsets meet the requirements of this section and Section 4(3) [4(9)] of this administrative regulation.

(c) An external emissions [emissions] offset shall be included and made enforceable by inclusion as a condition of the source [source] permit.

(c) An external emissions [emissions] offset shall only [not] be accepted if the cabinet requires the affected source to comply with a new emissions limitation [unless the affected source is subject to a new-emission limitation requirement of the cabinet] to ensure that its emissions shall be reduced by a specified amount in a specified time and. The form of the new emissions [emissions] limitation shall be enforceable by the cabinet and by the United States Environmental Protection Agency (U.S. EPA).

(2) [20] Cabinet initiated emissions [emissions] offsets. (a) The cabinet may commit to reducing emissions from mobile sources and other existing sources [including mobile sources] to provide a net air quality benefit in the impact area of a [the] proposed new source to accommodate the proposed new source.
(b) The emissions reduction [The commitment shall be reflected in the emissions [emissions] limitation requirements of the cabinet] for the new and existing sources as required by this section.

Section 7. [8.] Source Obligation. (1) An owner or operator of a source or modification subject to this administrative regulation shall construct and operate the source or modification in accordance with the application submitted to the cabinet under this administrative regulation and 401 KAR 52-020 or under the terms of an approval to construct [who constructs or operates an applicable source or modification not in accordance with the application submitted pursuant to Sections 4 and 5 of this administrative regulation or with the terms of an approval to construct or an owner or operator of a source or modification subject to this administrative regulation who begins actual construction after September 22, 1982 without applying for and receiving approval according to the requirements of this section shall be subject to appropriate enforcement action].

(2) Approval to construct shall become invalid if construction:

1. is not commenced within 18 [18] months after receipt of the approval;
2. [or if-constructed] is discontinued for a period of eighteen [18] months or more or
3. [if-constructed] is not completed within a reasonable time.

(b) The cabinet may extend the 18 (18) month period upon a satisfactory showing that an extension is justified.

1. An extension shall not apply to the time period between construction of the approved phases of a phased construction project.
2. Each phase shall commence construction within eight [18] months of the project's approval.
3. Approval to construct shall not relieve an owner or operator of the responsibility to comply fully with applicable provisions of 401 KAR [Title 49;] Chapters 50 to 63 and any other requirements under local, state, or federal law.

(4) If [At the time that] a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an [a state- and- federal] enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this administrative regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(5) The provisions of this subsection shall apply to projects at existing emissions units at a major stationary source other than projects at a clean unit or at a source at a PAA if:

1. There is a reasonable possibility that a project that is not part of a major modification may result in a significant emissions increase; and
2. The owner or operator uses the method specified in 401 KAR 51-001, Section 1(202)(c) to calculate projected actual emissions.

(b) Before beginning actual construction of a project specified in paragraph (a) of this subsection, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;
2. Identification of the emissions units for which emissions of a regulated NSR pollutant may be affected by the project; and
3. A description of the site where the project is located and the emissions of a regulated NSR pollutant for which emissions of the units identified in paragraph (a) of this subsection and
4. Calculate and maintain a record of the annual emissions in tons per year on a calendar year basis for:
5. Five (5) years following resumption of regular operations after the change or
b. Ten (10) years if the project increases the design capacity of or potential to emit for that regulated NSR pollutant at the emissions unit.
(d) If the unit is an existing EUSGU, before beginning actual construction, the owner or operator:
1. Shall provide a copy of the information in paragraph (b) of this subsection to the cabinet; and
2. Shall not be required to obtain a determination from the cabinet before beginning actual construction; and
3. Shall submit a report to the cabinet within sixty (60) days after the end of each year during which records are required to be generated under paragraph (b) of this subsection that contains the unit's annual emissions during the calendar year preceding report submittal.
(e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a report to the cabinet if:
   a. The annual emissions, in tons per year, from a project identified in paragraph (a) of this subsection exceed the baseline actual emissions, as documented and maintained pursuant to paragraph (c) of this subsection, by a significant amount for that regulated NSR pollutant; and
   b. The emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (c) of this subsection.
2. The report shall be submitted to the cabinet within sixty (60) days after the end of the year during which records are required to be generated under paragraph (b) of this subsection and shall contain the following:
   a. The name, address, and telephone number of the major stationary source;
   b. The annual emissions as calculated pursuant to paragraph (c) of this subsection; and
   c. Any other information that the owner or operator wishes to include in the report.
(f) The owner or operator of the source shall make the information required to be documented and maintained under this subsection available for review upon request for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

Section 8. [6.] Permit Condition Recission. (1) An owner or operator holding a permit for a stationary source or modification which was issued pursuant to 401 KAR 51:050 or 401 KAR 51:051E may request that the cabinet rescind the applicable conditions [permit condition].
   (2) The cabinet shall rescind a permit condition if [as] requested and if the applicant demonstrates to the satisfaction of the cabinet that this administrative regulation does not apply to the source or modification or to a portion of the source or modification [thereof] if construction will [would] have commenced after September 22, 1982, and if the owner or operator demonstrates that the rescission [will] would not violate the requirements of Sections 4(3) and 7 [6(3) and 6] of this administrative regulation.

Section 9. [5A.] Class I Areas. (1) The following areas which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:
   a. International parks;
   b. National wilderness areas and national memorial parks which exceed 5,000 acres in size; and
   c. National parks that [which] exceed 6,000 acres in size.
   (2) Any other [Another] area, unless otherwise specified in the legislation creating the area, is designated Class II but may be redesignated as provided in 40 C.F.R. 51.166(c); as published in the Code of Federal Regulations, Title 40, July 1, 1994.
   (3) The visibility protection requirements of this section and Section 14-46 of this administrative regulation shall apply only to sources that [which] may impact a mandatory Class I federal area.
   (4) The following areas may be redesignated only as Class I or II:
      a. An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lake-
shore or seashore; and
      b. A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

   (a) [A] No stationary source or modification to which this section applies shall not begin actual construction without a permit that [which] states that the stationary source or modification shall meet the requirements of this section [would meet those requirements].
   (b) This section shall apply to construction of a new major stationary source or major modification that will [would] be constructed in an area designated as nonattainment under 42 U.S.C. 7407(d)(1)(A)(i) and potentially have an impact on visibility in a Class I area.
   (c) This section shall apply to a major stationary source or major modification for each pollutant subject to regulation under [the] 42 U.S.C. 7407 to (-) 7623 that it will [would] emit, except as provided in paragraphs (d) and (e) of this subsection.
   (d) This section shall not apply to a particular major stationary source or major modification if:
      1. The source or modification is [would be] a nonprofit health or nonprofit educational institution, or a major modification will [would] occur at the institution, and the Governor of the Commonwealth requests that it be exempt from the [these] requirements of this section; and
      2. The source is a portable stationary source that [which] has previously received a permit under this section and will be temporarily relocated, [is] and:
         a. The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and
         b. The emissions from the source will [would] not exceed the [its] allowable emissions;
      3. [b] The emissions from the source will not impact a [would impact-no] Class I area or an [and] area where an applicable increment is known to be violated; and
      4. Reasonable notice is given to the cabinet prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. The notice shall be given to the cabinet not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the cabinet.
   (e) This section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source or modification increase of that pollutant from the modification:
      1. Will not impact a [Would impact-no] Class I area;
      2. Will not impact an [and] area where an applicable increment is known to be violated; and
   (2) Visibility impact analyses. The owner or operator of a source shall provide an analysis of the impact to visibility that will [would] occur in a Class I area as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.
   (3) Federal land manager notification.
      a. The federal land manager and the federal official charged with direct responsibility for management of Class I areas has an affirmative responsibility to protect the visibility and other air quality related values [including visibility] of the Class I lands and to consider, in consultation with the cabinet, if [whether] a proposed source or modification will have an adverse impact on those values.
      b. The cabinet shall provide written notification to all affected federal land managers and to the federal official charged with direct responsibility for management of lands within the Class I area of a permit application or an advance notice of a permit application for a proposed new major stationary source or major modification that may affect visibility in a Class I area. The cabinet shall also provide the notification to the federal official charged with direct responsibility for management of lands within the Class I area. The notification shall:
         1. Include a copy of all information relevant to the permit application,
2. [and shall] Be submitted pursuant to paragraph (b) of this subsection [given] within thirty (30) days of receipt of the permit application or advanced notice of permit application and at least sixty (60) days prior to a public hearing on the application for a permit to construct, and
3. The application shall include an analysis of the proposed source’s anticipated impacts on visibility in a Class I area. [The cabinet shall also notify all affected federal land managers within thirty (30) days of receipt of an advance notification of the permit application.]

(c), The cabinet shall consider an analysis [performed] by the federal land manager provided within thirty (30) days of the notification and analysis required by paragraph (b) of this subsection, that the proposed new major stationary source or major modification may have an adverse impact on visibility in a Class I area.

2. If the cabinet finds that the analysis does not demonstrate, to the satisfaction of the cabinet, that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the public hearing notice required in 401 KAR 52:100, either explain that decision or give notice as to where the explanation can be obtained.

(d) Adverse impact on visibility as it applies to paragraphs (c) of this subsection shall be determined on a case-by-case basis, taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with the timing of visitor use of the Class I area, and the frequency and extent of natural conditions that reduce visibility.

(4) Public participation. The cabinet shall follow the applicable procedures of 401 KAR 52:100 in processing applications under this section. The cabinet shall follow the procedures at 40 C.F.R. 52.21(i) as in effect on July 1, 2003 [August 7, 1980], to the extent that the procedures of 401 KAR 52:100 do not apply.

(5) National visibility goals:

(a) The cabinet shall only issue permits to those sources for which whose emissions will be consistent with making reasonable progress toward the national goal of preventing future, and remedying existing, impairment of visibility in Class I areas which impairment results from manmade air pollution.

(b) In making the decision to issue a permit, the cabinet may take into account the overriding factors of:

1. The cost of compliance;
2. The time necessary for compliance;
3. The energy and nonair quality environmental impacts of compliance; and
4. The useful life of the source.

(6) Monitoring:

(a) The cabinet may require monitoring of visibility in a Class I area near the proposed new stationary source or major modification using human observations, telemeteric, photographic cameras, nephelometers, fine particulate monitors, or other appropriate methods as specified by the U.S. EPA.

(b) The monitoring method selected shall be determined on a case-by-case basis by the cabinet.

(c) The cabinet shall not undertake visibility monitoring in a Class I area without the approval of the federal land manager.

(d) Data obtained from visibility monitoring shall be made available to the cabinet, the federal land manager, and the U.S. EPA, upon request.

Section 11. Clean Unit Test for Emissions Units that are Subject to LAER. For any emissions unit that is subject to LAER and for which the cabinet has issued a major NSR permit in the past ten (10) years, an owner or operator of a major stationary source may use the clean unit test provisions specified in this section to determine if an emissions increase at a clean unit is part of a project that is a major modification.

(1) General provisions for clean units.

(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.

(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:

1. After the effective date of the clean unit designation as determined according to subsection (3) of this section; and

2. Before the expiration date of the clean unit designation as determined according to subsection (4) of this section.

(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:

1. Cause the need for a change in the emissions limits or work practice requirements adopted in conjunction with LAER in the permit for the unit; or

2. Alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (5)(d) of this section.

(d) Unless an emissions unit requalifies as a clean unit according to subsection (2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of the necessary permit revisions.

1. The project causes the need for a change in the emissions limitations or work practice requirements that were determined in conjunction with LAER in the permit for the unit; or

2. The project will alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subsection (5)(d) of this section.

(e) Clean unit designation shall end immediately before the time actual construction begins on a project that will cause a unit to lose its clean unit designation if the owner or operator begins actual construction on a project before applying for a permit revision.

(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 12(a)(1), 2, and 4(b) of this administrative regulation as if the emissions unit is not a clean unit.

(g) 1. For emissions units with PSD permits, the BACT level of emissions reductions or work practice requirements shall satisfy the requirement for meeting LAER in subsections (3) to (8) of this section if:

A. The emissions unit has received a PSD permit that complies with BACT within the last ten (10) years; and

b. The emissions unit is located in an area that was redesignated as nonattainment for the relevant pollutant after the PSD permit is issued and before the SIP including the clean unit provisions become effective.

2. For these emissions units, the requirements for the LAER determination made under subsection (1)(c) of this section shall apply to the BACT permit terms and conditions.

3. The requirements of subsection (6)(a)3 of this section shall not apply to emissions units that qualify for clean unit status according to this paragraph.

(2) Qualifying or requalifying to use the clean unit applicability test:

(a) An emissions unit shall automatically qualify as a clean unit if the unit meets the requirements in this paragraph.

1. Permitting requirement The owner or operator of an emissions unit shall have received a major NSR permit within the past ten (10) years and shall maintain and provide information upon request by the cabinet or U.S. EPA to demonstrate that this permitting requirement is met.

2. Qualifying air pollution control technologies requirement. Air pollutant emissions from the emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets the following requirements:

a. The control technology shall achieve the LAER level of emissions reductions determined by issuance of a major NSR permit within the past ten (10) years; and

b. The emissions unit shall not be eligible for the clean unit designation if the LAER determination did not result in a requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type; and

c. The owner or operator shall make an investment to install the control technology. An investment includes expenses to research the application of, or to actually apply, a pollution prevention technique to the emissions unit.

(b) Requalifying for the clean unit designation. After the original clean unit designation expires or is lost, an emissions unit may requalify as a clean unit under the provisions of this paragraph or under Section 12 of this administrative regulation.
1. An owner or operator shall obtain a new major NSR permit or permit revision as applicable, issued pursuant to 401 KAR 52:020 for an emissions unit that is requalifying for clean unit designation.

The permit shall require compliance with the current-day LAER, and the emissions unit shall meet the requirements in subsection (3)(a) of this section.

(3) Effective date of the clean unit designation. The date that the owner or operator may begin to use the clean unit test to determine if a project involving an emissions unit is a major modification shall be determined according to paragraph (a) or (b) of this subsection as applicable.

(a) The effective date for a new clean unit designation is the date the owner or operator attains the LAER that are recorded in the major NSR permit and subsequently reflected in the Title V permit.

(b) The effective date for a new clean unit designation is the date the owner or operator attains the LAER that are recorded in the major NSR permit and subsequently reflected in the Title V permit.

(4) Clean unit expiration. The date that the owner or operator shall no longer be allowed to use the clean unit test to determine if a project involving an emissions unit is, or is part of, a major modification shall be determined according to paragraph (a) or (b) of this subsection as applicable.

(a) For an emissions unit that automatically qualifies as a clean unit under subsection (2)(a) of this section or a unit that requalifies by implementing new control technology to meet current-day LAER, the expiration date of the clean unit designation shall be:

1. Ten (10) years after the effective date or ten (10) years after the date the equipment is placed into service, whichever is earlier.
2. Any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation pursuant to subsection (6) of this section.

(b) The clean unit designation for an emissions unit that requalifies for the clean unit designation using an existing control technology shall expire:

1. Ten (10) years after the effective date; or
2. Prior to the expiration date, if the owner or operator fails to comply with the provisions for maintaining the clean unit designation.

(5) Required Title V permit content for a clean unit. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which this clean unit designation applies.

(b) The effective date of the clean unit designation.

(c) If the effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date.

2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.

(c) The expiration date of the clean unit designation.

1. If the expiration date is not known at the date the clean unit designation is initially recorded in the Title V permit, the permit shall describe the event that shall determine the expiration date.
2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date.
3. If originally absent from the Title V permit, the expiration date shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.

(d) All emissions limitations and work practice requirements adopted in conjunction with LAER and any physical or operational characteristics that formed the basis for the LAER determination.

(e) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (6) of this section.

(f) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, pursuant to subsection (6) of this section.

(g) Maintaining the clean unit designation.

The owner or operator of a clean unit shall conform to the provisions of this section to maintain the clean unit designation.

1. The clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with the LAER that are recorded in the major NSR permit and subsequently reflected in the Title V permit.

2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination.

3. The clean unit shall not emit above a level that has been offset.

4. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation; and
5. The clean unit shall continue to control emissions using the specific air pollution control technology that is the basis for its clean unit designation.

The clean unit designation shall end if the emissions unit or control technology is replaced.

(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit as a clean unit. Failing to conform to the restrictions for any (1) pollutant shall only affect the clean unit designation for that pollutant.

(c) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis or for generating offsets, unless:

1. Such use occurs before the effective date of the clean unit designation or after the clean unit designation expires; or
2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.

(d) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation.

1. The unit reduces emissions below the level that qualified the unit as a clean unit; and
2. The reductions are surplus, quantifiable, and permanent.

(e) For generating offsets, reductions shall be federally enforceable.

(f) For determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

(g) Effect of area redesignation on clean units.

(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.

(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a clean unit according to the requirements currently applicable in the area, regardless of the area's original attainment status during the previous designation period.

Section 12. Clean Unit Provisions for Emissions Units that Achieve an Emissions Limitation Comparable to LAER. For an emissions unit that does not qualify as a clean unit under Section 11 of this administrative regulation but is achieving a level of emissions control comparable to LAER, the owner or operator of a major stationary source may use the clean unit test to demonstrate that the emissions unit is part of a project that is a major modification.

(1) General provisions for clean units.

(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.

(b) A project for which the owner or operator begins actual
construction shall be considered to have occurred while the emis-
sions unit is a clean unit, if actual construction begins:
1. After the effective date of the clean unit designation as de-
termined pursuant to subsection (4) of this section; and
2. Before the expiration date of the clean unit designation as
determined pursuant to subsection (5) of this section.
(c) For an emissions unit to retain its clean unit designation
during a project at a clean unit, the project shall not:
1. Cause the need for a change in the emissions limitations or
work practice requirements in the permit for the unit that have been
determined to be comparable to LAER according to subsection (3)
of this section; or
2. Alter any physical or operational characteristics that formed
the basis for determining that the emissions unit's control technol-
ogy achieves a level of emissions control comparable to LAER
according to subsection (7)(d) of this section.
(d) Unless an emissions unit regains as a clean unit ac-
cording to subsection (2)(b) of this section, the unit shall lose its
designation as a clean unit upon issuance of the necessary permit
revision:
1. The project causes the need for a change in the emissions
limitations or work practice requirements in the permit for the unit
that have been determined to be comparable to LAER; or
2. The project will alter any physical or operational characteris-
tics that formed the basis for determining that the emissions unit's
control technology achieves a level of emissions control comparable
to LAER.
(e) Clean unit designation shall end immediately before the
time actual construction begins on a project that will cause a unit to
lose its clean unit designation, if the owner or operator begins ac-
tual construction on a project before applying for a permit revision.
(f) A project that causes an emissions unit to lose its clean unit
designation shall be subject to the applicability requirements of
Section 1(2)(a), 2, and 4 and (b) of this administrative regulation
as if the emissions unit is not a clean unit.
(g) Qualifying or requalifying to use the clean unit applicability
test:
(a) An emissions unit shall qualify as a clean unit if the unit
meets the requirements of this paragraph.
1. Qualifying air pollution control technology requirement. Air
pollutant emissions from an emissions unit shall be reduced
through the use of air pollution control technology, including pollu-
tion prevention or work practices, and the owner or operator shall:
   a. Demonstrate that an emissions unit's control technology is
      comparable to LAER according to the requirements of subsection
      (3) of this section;
   b. Demonstrate that an emissions unit's control technology
      reduces emissions below the level of a standard, uncontrolled
      emissions unit of the same type, and;
   c. Make an investment to install the control technology. An
      investment shall include expenses to research the application of, or
to actually apply, a pollution prevention technique to the emissions
      unit.
2. Impact of emissions from the unit requirement. The allow-
able emissions from the emissions unit, as determined by the cabi-
et, shall not:
   a. Cause or contribute to a violation of any national ambient air
      quality standard or PSD increment; or
   b. Adversely impact visibility or another air quality related value
      that has been identified for a federal Class I area by a federal land
      manager and for which information is available to the general pub-
      lic.
3. Date of installation requirement.
   a. For control technology installed before provisions for clean
      units are effective in the Kentucky SIP, the owner or operator of an
      emissions unit with control technology on which clean unit desig-
nation is based, shall apply for clean unit designation within two (2)
      years after the requirements for clean units become effective in the
      Kentucky SIP;
   b. For control technology installed after the provisions for clean
      units become effective in the Kentucky SIP, the owner or operator
      shall apply for clean unit designation at the time the control tech-
      nology is installed.
   (b) Requalifying as a clean unit. An emissions unit may re-
   quality as a clean unit after the original clean unit designation ex-
   pires or is lost according to provisions in subsections (6) and (7) of
   this section or under clean unit provisions in Section 11 of this
   administrative regulation.
   1. The owner or operator shall obtain a new permit or permit
      revision pursuant to subsections (6) and (7) of this section and 401
      KAR 50-200 that demonstrates the emissions unit's control technol-
      ogy is achieving a level of emissions control comparable to
current-day LAER.
   2. The emissions unit shall meet the requirements in subsec-
      tion (2)(a) and 2 of this section.
   3. Demonstrating control effectiveness comparable to LAER.
      The owner or operator shall demonstrate that the emissions unit's
control technology is comparable to LAER under the provisions of
      either paragraph (a) or (b) of this subsection.
      (a) Comparison of the control technology to previous LAER
determinations.
      1. An emissions unit's control technology shall be presumed to
         be comparable to LAER if the control technology achieves an
         emissions limitation that is at least as stringent as one of the five
         best performing similar sources for which a LAER determination
         has been made within the preceding five (5) years and for which
         information has been entered into the RACT/BACT/LAER clear-
         inghouse.
      2. The cabinet shall consider any information on achieved-in-
         practice pollution control technologies provided during the public
         comment period:
         a. To determine the accuracy of any presumptive determina-
            tion that the control technology is comparable to LAER; and
         b. To consider any additional LAER determinations of which
            the cabinet is aware.
      (b) The substantially-as-effective test. The owner or operator
      may demonstrate that the emissions unit's control technology is
      substantially as effective as LAER according to this paragraph. The
      cabinet shall:
      1. Shall consider the evidence on a case-by-case basis that an
         owner or operator, and any other person during the public partici-
         pation process, provides to the cabinet to demonstrate if the emis-
         sions unit's control technology is substantially as effective as
         LAER; and
      2. Shall determine if the emissions unit's air pollution control
         technology is substantially as effective as LAER after considering
         the evidence.
   (c) Time of comparison.
   1. Emissions units with control technologies installed before
      provisions for clean units are effective in the Kentucky SIP. The
      owner or operator of an emissions unit for which control technology
      is installed before the provisions regarding clean units are effective
      in the Kentucky SIP shall demonstrate to the cabinet that the emis-
      sions limitation achieved by the emissions unit's control technology
      is comparable to:
      a. The LAER requirements that applied at the time the control
         technology was installed; or
      b. The current-day LAER requirements.
   2. Emissions units with control technologies installed after
      provisions for clean units are effective in the Kentucky SIP. The
      owner or operator of an emissions unit for which control technology
      is installed after the provisions regarding clean units are effective
      in the Kentucky SIP shall demonstrate to the cabinet that the emis-
      sions limitation achieved by the emissions unit's control technology
      is comparable to current-day LAER requirements.
   3. Effective date of the clean unit designation. The date that
      the owner or operator may begin to use the clean unit test to de-
      termine if a project involving an emissions unit is a major modifi-
      cation shall be the later of:
      (a) The date that the permit or permit revision required by sub-
          section (6) of this section is issued; or
      (b) The date that the emissions unit's air pollution control tech-
          nology is placed into service.
   (5) Clean unit expiration. The date the owner or operator shall
      no longer be allowed to use the clean unit test to determine if a
      project involving an emissions unit is, or is part of a major modifi-
      cation shall be determined according to this subsection:
      (a) For an emissions unit with a clean unit designation based
on a demonstration by the owner or operator that the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, the clean unit designation shall expire ten (10) years from the date the unit's control technology was installed.

(b) For all other emissions units, the clean unit designation shall expire ten (10) years from the effective date of the clean unit designation.

(c) The clean unit designation shall expire at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation according to subsection (8) of this section.

(9) Procedures for designating emissions units as clean units.

(a) The cabinet shall designate an emissions unit as a clean unit by issuing a permit or permit revision under 401 KAR Chapter 52, including requirements for public notice of the proposed clean unit designation and opportunity for public comment; and

(b) The permit or permit revision shall meet the requirements of subsection (7) of this section.

(10) Required permit content. The Title V permit for a major stationary source with a clean unit shall, after the effective date of the clean unit designation and in accordance with the applicable provisions of 401 KAR Chapter 52, but not later than the date the Title V permit is renewed, include the following terms and conditions:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the pollutant for which the clean unit designation applies.

(b) The effective date of clean unit designation.

1. If the effective date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revisions shall describe the event that shall determine the effective date. Once the effective date is determined, the owner or operator shall notify the cabinet of the exact date; and

2. If originally absent from the Title V permit, the effective date of the clean unit shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.

(c) The expiration date of clean unit designation.

1. If the expiration date is not known on the date the clean unit designation is initially recorded in the Title V permit, the permit or permit revision shall describe the event that shall determine the expiration date.

2. Once the expiration date is determined, the owner or operator shall notify the cabinet of the exact date; and

3. If originally absent from the Title V permit, the expiration date shall be added to the source's Title V permit at the first opportunity the permit is opened, but not later than the next renewal.

(11) All emissions limitations and work practice requirements adopted in conjunction with emissions limitations necessary to assure the control technology continues to achieve an emissions limitation comparable to LAER and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER.

(a) Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation pursuant to subsection (8) of this section.

(b) Terms reflecting the owner or operator's duty to maintain the clean unit designation and the consequences of failing to do so, according to subsection (8) of this section.

(c) Maintaining the clean unit designation.

(a) The owner or operator shall conform to the provisions of this subsection to maintain clean unit status.

1. To ensure that the control technology continues to achieve emissions control comparable to LAER, the clean unit shall comply with the emissions limitations or work practice requirements adopted in conjunction with those that are comparable to LAER, which are recorded in the source's major NRPermit or permit revisions and subsequently reflected in the Title V permit that designates the unit as a clean unit.

2. The owner or operator shall not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to LAER.

3. The clean unit shall comply with all terms and conditions in the Title V permit related to the unit's clean unit designation.

4. The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. The clean unit designation shall end if the emissions unit or control technology is replaced.

(b) The requirements of this subsection shall apply to each pollutant for which the cabinet has designated an emissions unit a clean unit. Failing to conform to the restrictions for one pollutant shall only affect the clean unit designation for that pollutant.

(9) Offsets and netting at clean units.

(a) Emissions changes that occur at a clean unit shall not be included in calculating a significant net emissions increase to be used in a netting analysis or for offsets, unless:

1. Such use occurs before the date the clean unit provisions are effective in the Kentucky SIP or after the clean unit designation expires; or

2. The emissions unit reduces emissions below the level that qualified the unit as a clean unit.

(b) The owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emissions limitation.

1. The unit reduces emissions below the level that qualified the unit as a clean unit; and

2. The reductions are surplus, quantifiable, and permanent.

(c) For generating offsets, reductions shall be federally enforceable.

(d) For determining creditable net emissions increases and decreases, the reductions shall be enforceable as a practical matter.

(10) Effect of area redesignation on clean units.

(a) The clean unit designation of an emissions unit shall not be affected by redesignation of the attainment status of the area in which it is located.

(b) If an existing clean unit designation expires or is lost, the unit shall qualify as a clean unit according to the requirements that are currently applicable in the area, regardless of the area's original attainment status during the previous designation period.

Section 13. PCP Exclusion Procedural Requirements. For a project to qualify for a PCP exclusion, an owner or operator shall comply with the provisions of this section.

(1) To request a PCP designation for a project the owner or operator shall:

(a) Submit a notice to the cabinet before beginning actual construction for a project that is listed in the definition for "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); or

(b) Submit an application for a permit or permit revision and obtain approval to use the PCP exclusion from the cabinet according to subsection (5) of this section for a project that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f).

(2) The owner or operator for all projects that rely on the PCP exclusion shall perform:

(a) An environmentally beneficial analysis.

1. The environmental benefit from the emissions reductions of pollutants regulated under 42 U.S.C. 7401 to 7477g (Clean Air Act) shall outweigh the environmental detriment of emissions increases in pollutants regulated under the Act; and

2. A statement that the project is implementing a technology that those listed in 401 KAR 51:001, Section 1(188)(a) to (f) shall satisfy the requirement in subparagraph 1 of this paragraph.

(b) Air quality analysis. The emissions increases from the project shall not:

1. Cause or contribute to a violation of any national ambient air quality standard or PSD increment; or

2. Adversely impact visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

(3) Content of notice or application for a permit or permit revi-
sion. The owner or operator shall include the following information in the notice or application for a permit or permit revision submitted to the cabinet for a PCP:

(a) A description of the project;
(b) The potential emissions increases and decreases of any pollutant regulated under the Act and the projected emissions increases and decreases that will result from the project;
(c) A copy of the environmentally beneficial analysis required by subsection (2)(a) of this section;
(d) A description of all methods, including monitoring and recordkeeping, that shall be used on an ongoing basis to demonstrate that the project is environmentally beneficial and sufficient to meet the applicable requirements of 401 KAR Chapter 52;
(e) A certification that the project shall be designed and operated in a manner that is consistent with:
   1. The proper industry and engineering practices;
   2. The environmentally beneficial analysis and air quality analysis required by subsection (2)(a) and (b) of this section;
   3. The information submitted in the notice or permit application;
   4. Procedures that minimize emissions of collateral pollutants within the physical configuration and operational standards usually associated with the emissions control device or strategy;
(f) Demonstration that the PCP shall not have an adverse air quality impact.
   1. The demonstration requirement may be satisfied with modeling, screening level modeling results, a statement that the collateral emission increase is included within the parameters used in the most recent modeling exercise as required by subsection (2)(b) of this section, or another method approved by the cabinet.
   2. An air quality impact analysis shall not be required for any pollutant that will not experience a significant emissions increase from the project;
   3. Notice process for listed projects. The owner or operator may begin actual construction of a PCP project immediately after notice is sent to the cabinet for projects listed in the definition of "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); and
   4. Notice process for nonlisted projects. The owner or operator shall begin actual construction of a PCP that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f) until the cabinet approves and issues a permit or permit revision for the project according to 401 KAR 52:020. These procedures shall include the cabinet providing the public with:
   1. Notice of the proposed approval;
   2. Access to the environmentally beneficial analysis and the air quality analysis; and
   3. At least a thirty (30) day period for the public and the U.S. EPA to submit comments.
   (b) A list of all emissions units at the source designated as small, significant, or major, based on their potential to emit;
   (c) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;
   (d) Calculations of the baseline actual emissions for the emissions units with supporting documentation; and
   (e) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (1)(d) of this section.

(c) Permit requirements. The owner or operator shall comply with all provisions in a permit issued under 401 KAR 52:020 related to use and approval of the PCP exclusion.

(d) Generation of emissions reduction credits.
   1. Emissions reductions created by a PCP shall not be included in calculating a significant net emissions increase or for generating offsets, unless the emissions unit further reduces emissions after qualifying for the PCP exclusion.
   2. The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if such reductions are surplus, quantifiable, and permanent.
   3. For generating offsets, the reductions shall also be federally enforceable.
   4. For determining credits, net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

Section 14. Plant-wide Applicability Limit Provisions. The cabinet may approve the use of an actual PAL (PAL) for an existing major stationary source if the PAL meets the requirements of this section.

(1) General provisions.
   (a) An owner or operator may execute a project without triggering major NSR, if the source maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit. If these conditions are met, a project is:
      1. Shall not be considered a major modification for the PAL pollutant;
      2. Shall not have to be approved through Kentucky's major NSR program; and
      3. Shall not be subject to the provisions of Section 7(4) of this administrative regulation concerning restrictions on relaxing enforceable emissions limitations that the major stationary source used to avoid applicability of the major NSR program.
   (b) Except as provided under subparagraph (1)(a)(3) of this section, the major stationary source shall continue to comply with all applicable federal or state requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the PAL.
   (c) The cabinet shall not allow a PAL for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.
   (2) Permit application requirements. The owner or operator of a major stationary source shall submit the following information to the cabinet for approval as part of an application for a permit or permit revision requesting a PAL:
      (a) A list of all emissions units at the source designated as small, significant, or major, based on their potential to emit;
      (b) Identification of the federal and state applicable requirements, emissions limitations, and work practice requirements that apply to each emissions unit;
      (c) Calculations of the baseline actual emissions for the emissions units with supporting documentation; and
      (d) The calculation procedures the owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (1)(d) of this section.
      (3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary source in a federally enforceable permit pursuant to the requirements of this section.
         (a) The PAL shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire major stationary source, where:
            1. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL as a twelve (12) month average, rolled monthly; and
            2. For each month during the first eleven (11) months from the PAL effective date, the owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for
each emissions under the PAL is less than the PAL;
(b) The PAL shall be established in a PAL permit that;
1. Meets the public participation requirements in subsection (4) of this section; and
2. Contains all the requirements of subsection (6) of this section;
(c) A PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source;
(d) Each PAL shall regulate emissions of only one (1) pollutant;
(e) Each PAL shall have a PAL effective period of ten (10) years;
(f) The owner or operator of a major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of this section for each emissions unit under the PAL through the PAL effective period; and
(g) Emissions reductions of a PAL pollutant that occur during the PAL effective period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii); unless
1. The level of the PAL is reduced by the amount of such emissions reductions; and
2. The reductions will be creditable in the absence of the PAL.
(4) Public participation requirements. PALs for existing major stationary sources shall be established, renewed, or increased pursuant to this subsection and the applicable procedures of 401 KAR 52-100 for issuing permits or permit revisions. The cabinet shall:
(a) Provide the public with notice of the proposed approval of a PAL permit with at least a thirty (30) day period for submittal of public comment; and
(b) Address all material comments before taking final action on a PAL permit or permit revision.
(5) Setting the ten (10) year PAL level.
(a) The PAL level for a major stationary source shall be the sum of the baseline actual emissions of the PAL pollutant for all emissions units at the source during the chosen twenty-four (24) month period plus the applicable significant level for the PAL pollutant under the definition for "significant" in 401 KAR 51-001, Section (1220) or under the Act, whichever is lower.
(b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-four (24) month period shall be used to determine the baseline actual emissions for all existing emissions units.
(c) A different consecutive twenty-four (24) month period may be used for each different PAL pollutant.
(d) Emissions associated with units that were permanently shut down after the chosen twenty-four (24) month period shall be subtracted from the PAL level.
(e) The PAL permit shall contain all the requirements of subsection (6) of this section.
(f) Emissions from units for which actual construction began after the twenty-four (24) month period shall be added to the PAL level in an amount equal to the potential to emit of the units.
(g) The cabinet shall specify a reduced PAL level in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the cabinet is aware of prior to issuance of the PAL permit.
(6) Contents of the PAL permit. The PAL permit shall contain the following information:
(a) The PAL pollutant and the applicable source-wide emissions limitation in tons per year;
(b) The PAL permit effective date and the expiration date of the PAL or PAL effective period;
(c) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL under subsection (9) of this section before the end of the PAL effective period, the PAL shall remain in effect until a revised PAL permit is issued by the cabinet;
(d) A requirement that emissions calculations for compliance purposes include emissions from startups, shutdowns and malfunctions;
(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection (8) of this section;
(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve (12) month rolling total for each month as required by subsection (12)(a) of this section;
(g) A requirement that the major stationary source owner or operator shall monitor all emissions units in accordance with the provisions in subsection (12) of this section;
(h) A requirement that the owner or operator shall retain the records required under subsection (12) of this section on site. Records may be retained in an electronic format or another acceptable format approved by the cabinet;
(i) A requirement for the owner or operator to submit, by the reports required under subsection (13) of this section by the required deadlines; and
(j) Other requirements necessary to implement and enforce the PAL.
(7) PAL effective period and reopening of a PAL permit.
(a) A PAL effective period shall be ten (10) years.
(b) The cabinet shall reopen a PAL permit to;
1. Correct typographical or calculation errors made in setting the PAL;
2. Reflect a more accurate determination of emissions used to establish the PAL;
3. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or
4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of this section.
(c) The cabinet may reopen the PAL permit during the PAL effective period to;
1. Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date;
2. Reduce the PAL consistent with any other requirement;
3. Enforce as a practical matter; and,
4. Imposed on the major stationary source under the SIP; and
5. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid causing or contributing to;
   a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or
   b. An adverse impact on visibility or another air quality related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.
(d) All permit reopenings shall be carried out under the public participation requirements of subsection (4) of this section except for permit reopenings to correct typographical or calculation of errors that do not increase the PAL level.
(8) Expiration of a PAL, A PAL that is not renewed shall expire at the end of the PAL effective period and the requirements of this subsection shall then apply:
(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established as follows;
1. An owner or operator of a major stationary source using a PAL shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL;
2. This proposal shall be submitted to the cabinet at least six (6) months before the expiration of the PAL permit but not sooner than eighteen (18) months before permit expiration.
(b) If the PAL has not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (9)(e) of this section, distribution of allowable emissions shall be made as if the PAL has been adjusted;
2. The cabinet shall decide the date and procedure the owner or operator shall use to distribute the PAL allowable emissions.
3. The cabinet shall issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the cabinet determines is appropriate.
(b) Each emissions unit shall comply with the allowable emissions limitation on a twelve (12) month rolling basis. The cabinet
may approve the use of monitoring systems other than CEMS, CEEMS, PEMS, or CPMS to demonstrate compliance with the allowable emissions limitation.

(c) The source shall continue to comply with a source-wide, multiunit emissions cap, equivalent to the level of the PAL emissions limitation until the cabinet issues the revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(d) A major modification at the major stationary source shall be subject to major NSR requirements.

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements eliminated by the PAL that applied during or before the PAL effective period, except for those emissions limitations established pursuant to Section 7(d) of this administrative regulation.

(9) Renewal of a PAL

(a) Public participation requirements.

1. The cabinet shall follow the public participation procedures specified in subsection (4) of this section in approving a request to renew a PAL for a major stationary source.

2. The cabinet shall provide a written rationale for the proposed PAL level for public review and comment.

3. Any person may propose a PAL level for the source for consideration by the cabinet during the public review period.

(b) Application deadline.

1. A major stationary source owner or operator shall submit an application for renewal of a PAL at least six (6) months before the date of permit expiration but not earlier than eighteen (18) months before permit expiration.

2. The deadline for application submittal shall ensure that the permit shall not expire before the permit is renewed.

3. If a complete application for renewal is submitted within the timeframe specified in subparagraph 1 of this paragraph, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) Application requirements. The application to renew a PAL permit shall contain:

1. The information required in subsection (2) of this section;

2. A proposed PAL level;

3. The sum of the potential to emit of all emissions units under the PAL with supporting documentation; and

4. Any other information the owner or operator wishes the cabinet to consider in determining the appropriate level to renew the PAL.

(d) PAL adjustment.

1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the PAL downward to a level no greater than the potential to emit if a source's potential to emit has declined below the PAL level.

2. The cabinet may renew the PAL at the same level as the current PAL without considering the factors specified in subparagraph 3 of this section, if the emissions level calculated according to subsection (5) of this section is equal to or greater than eighty (80) percent of the PAL level; or

3. The cabinet may set the PAL at a level that is determined to be:

   a. More representative of the source's baseline actual emissions; or

   b. Appropriate considering the following factors:

      (i) Air quality needs;

      (ii) Advances in control technology;

      (iii) Anticipated economic growth in the area of the source;

      (iv) The cabinet's goal of promoting voluntary emissions reductions; and

   (v) Other factors as specifically identified by the cabinet in its written rationale for setting the PAL level.

4. The cabinet shall not approve a renewed PAL level higher than the current level unless the major stationary source has complied with the provisions of subsection (10) of this section.

(e) The PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever comes first, if:

1. The compliance date for a state or federal applicable requirement that applies to the PAL source occurs during the PAL effective period; and

2. The cabinet has not already adjusted for such requirement.

(10) Increasing a PAL during the PAL effective period. The cabinet may increase a PAL after the PAL effective period if the major stationary source complies with the provisions of this subsection.

(a) Application procedures. The owner or operator of the major stationary source shall submit a complete application for a PAL increase that includes the following:

   1. Identification of the emissions units contributing to the increase in emissions for the PAL major modification;

   2. Demonstration that increased PAL, as calculated in paragraph (c) of this subsection does not exceed the PAL.

   a. The level of control that results from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years.

   b. If an emissions unit currently complies with BACT or LAER, the assumed control level for that emissions unit shall be equal to the current level of BACT or LAER for that emissions unit; and

   c. A statement that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(b) NSR permit and compliance requirement. The owner or operator shall obtain a major NSR permit for all emissions units contributing to the increase in emissions for the PAL major modification.

1. A significant level shall not apply in deciding for which emissions units a major NSR permit shall be obtained; and

2. Emissions units that obtain a major NSR permit shall comply with any emissions requirements resulting from the major NSR process, even though the units shall also become subject to the PAL or shall continue to be subject to the PAL.

(c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the baseline actual emissions of the small emissions units.

(d) Public notice requirement. The public notice requirements of subsection (4) of this section shall be followed during PAL permit revision for an increased PAL level.

(11) Monitoring requirements for PALs.

(a) General requirements.

1. Each PAL permit shall contain enforceable requirements for the chosen monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time.

2. A monitoring system authorized for use in the PAL permit shall be:

   a. Approved by the cabinet; and

   b. Based on sound science and meet generally-acceptable scientific procedures for data quality and manipulation.

3. The data generated by a monitoring system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

4. The PAL monitoring system shall employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraph (b) of this subsection.

5. The cabinet may approve an alternative monitoring approach that meets the requirements of subparagraphs 1 to 3 of this paragraph; and

6. Failure to use a monitoring system that meets the requirements of this section shall render the PAL invalid.

(b) Minimum performance requirements for approved monitoring approaches. If conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this subsection, the following shall be acceptable monitoring approaches:

   1. Mass balance calculations for activities using coatings or solvents;

   2. CEMS;

   3. CPMS or PEMS; and

   4. Emissions factors.
(c) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coatings or solvents shall:

1. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit; and
2. If it cannot be accounted for in the process, assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit; and
3. If the vendor of the material or fuel from which the pollutant originates publishes a range, use the highest value of the published range of pollutant content to calculate the PAL pollutant emissions, unless the cabinet determines there is site-specific data or a site-specific monitoring program to support another pollutant content within the range.

(d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. CEMS shall comply with applicable Performance Specifications in 40 CFR Part 60, Appendix B; and
2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

(e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

1. The CPMS or PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter and the PAL pollutant emissions across the range of operation of the emissions unit; and
2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the cabinet.

(f) Emissions factors. An owner or operator using emissions factors to monitor PAL pollutant emissions shall meet the following requirements:

1. All emissions factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.
2. The emissions unit shall operate within the designated range of use for the emissions factor, if applicable; and
3. If technically practicable, the owner or operator of a significant emission source that relies on an emissions factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emissions factor within six (6) months of PAL permit issuance, unless the cabinet determines that testing is not required.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(h) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit as an alternative to the requirements in paragraphs (c) to (g) of this subsection, the following shall apply:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at operating points if a correlation cannot be demonstrated; or
2. If there is no correlation between monitored parameters and the PAL pollutant emissions, determine that operation of the emissions unit during operating conditions is a violation of the PAL.

(i) Revalidation. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the cabinet. Validation testing shall occur at least once every five (5) years after issuance of the PAL.

(12) Recordkeeping requirements.

(a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's twelve (12) month rolling total emissions for five (5) years from the date of the determination.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL:

1. A copy of the PAL permit application and any applications for revisions to the PAL; and
2. Each annual certification of compliance pursuant to Title V and the data used to certify the compliance.

(13) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and permit deviation reports to the cabinet in accordance with 401 KAR Chapter 52 that meet the following requirements:

a. Semiannual report. The semiannual report shall be submitted to the cabinet within thirty (30) days of the end of each reporting period and shall contain:

1. The identification of owner and operator and the permit number;
2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each month in the reporting period recorded pursuant to subsection (12)(a) of this section.
3. All data used in calculating the monthly and annual PAL pollutant emissions, including any quality assurance or quality control data;
4. A list of any emissions units modified or added to the major stationary source during the preceding six (6) month period;
5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero span calibration checks, and any corrective action following a deviation;
6. A notification of permanent or temporary shutdown of any monitoring system including:
   a. The reason for the shutdown;
   b. The anticipated date that the monitoring system shall be fully operational or shall be replaced with another monitoring system;
   c. If applicable, a statement that the emissions unit monitored by the monitoring system continued to operate without the monitoring system; and
   d. The calculation of the emissions of the pollutant of the number determined according to subsection (11)(c) of this section that is included in the permit; and
7. A signed statement by the responsible official, as defined by 401 KAR 52-001, certifying the truth, accuracy, and completeness of the information provided in the semiannual report.

(b) Deviation report. The major stationary source owner or operator shall submit reports of any deviation or exceedance of the PAL requirements, including periodic monitoring that is unavailable:

1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(ii)(B) shall satisfy this deviation reporting requirement.
2. The deviation report shall be submitted within the time limits prescribed by the applicable program implementing 40 C.F.R. 70.6(a)(3)(iii)(B);
3. The deviation report shall contain the following information:
   a. The identification of the owner, the operator and the permit number;
   b. The PAL requirement that experienced the deviation or that was exceeded;
   c. Emissions resulting from the deviation or the exceedance, and
   d. A signed statement by the responsible official, as defined by 401 KAR 52-001, certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Revalidation results. The owner or operator shall submit to the cabinet the results of any revalidation test or method within three (3) months after completion of the test or method.

(14) Transition requirements.

(a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published in 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a PAL that complies with the requirements of this section.

(b) The cabinet may supersede a PAL that was established before the date the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions published in 67 Fed. Reg. 80186, December 31, 2002, with a PAL that complies with the requirements of this section.
VOLUME 30, NUMBER 10 — April 1, 2004

Section 12. Significant Pollutant and Emission Rate. For this administrative regulation, the following pollutant and emission rates shall be considered significant:

- Carbon Monoxide: 100 ppm per year (tpy)
- Nitrogen Oxides: 40 tpy
- Sulfur Dioxide: 40 tpy
- Particulate Matter: 26 tpy of particulate matter emissions
- PM10: 15 tpy of PM10 emissions
- Ozone: 40 tpy of volatile organic compounds
- Lead: 0.6 tpy

Section 13. Significant Levels of Air Quality Impact. For this administrative regulation, the following levels of air quality impact shall be considered significant:

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LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 12, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 30, 2004 at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality at 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 23, 2004, five (5) workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at this hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 3, 2004. Send written notification of intent to be heard at the hearing or written comments on the proposed administrative regulation to the contact person. 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: Millie Ellis, Environmental Technologist III, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3362, fax (502) 573-3787.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation provides for the nonattainment new source review (NSR). It applies to the construction or modification of major stationary sources constructing in areas that are designated nonattainment for the specified national ambient air quality standards (NAAQS) pollutants. The regulation applies only to the pollutant for which the area in which the source is located is designated nonattainment and for which the source is major. To receive approval to construct, a source that is subject to this administrative regulation must show that it will not cause a net increase in pollution; will not create a delay in meeting the NAAQS; and that the source will install and use control technology that achieves the lowest achievable emissions rate (LAER).

(b) The necessity of this administrative regulation: The administrative regulation contains a preconstruction review program for the construction or modification of any major stationary source of air pollution in a nonattainment area, as mandated under 42 U.S.C. 7501 to 7515 (Part D to Subpart 1 of the Clean Air Act). The administrative regulation is necessary in order to assure that the NAAQS are achieved and maintained; to protect visibility and other Air Quality Related Values (AQRVs) in national parks and other natural areas of special concern; to assure that appropriate emission controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of all the consequences of such a decision.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. Once major new source review is triggered under this administrative regulation, the source must, among other things, meet LAER requirements; show that it will not cause a net increase in pollution and that it will not create a delay in meeting the NAAQS. The administrative regulation also conforms to 40 C.F.R. 51.165, as amended by 67 Fed. Reg. 80186 and is no more stringent than this corresponding federal mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The cabinet is required to promulgate administrative regulations for the prevention, abatement, and control of air pollution. The administrative regulation provides for the preconstruction review and permitting of construction or modification of major stationary sources locating in areas designated nonattainment for specified NAAQS, as required under Part D to Title I of the Clean Air Act. Most of the proposed changes to the administrative regulation are being made in order to bring the state regulation into conformance with the corresponding federal regulatory revisions for the NSR 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 amendment will update the administrative regulation to include the amendments to the federal rule published at 67 Fed. Reg. 80186 (December 31, 2002) and at 68 Fed. Reg. 63021 (November 7, 2003). The federal revisions include changes in NSR applicability requirements for modifications to allow sources more flexibility to respond to rapidly changing markets and to plan for future investments in pollution control and prevention technologies. These revisions address baseline actual emissions, actual-to-projected actual applicability test, clean unit test, plant-wide applicability limitations (PALS), and pollution control projects (PCPs). In addition to updating the existing provisions to agree with the current federal PSD rule, the language of the proposed administrative regulation has also been revised to conform to KRS Chapter 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to the administrative regulation is necessary in order to comply with KRS Chapter 224 and to afford Kentucky's businesses and industries the flexibility to modernize their operations and remain competitive with facilities in surrounding states.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to the administrative regulation conforms to KRS Chapter 224 as it is identical to the amendments to the federal regulation.

(d) How the amendment will assist in the effective administration of statutes: In addition to updating the existing administrative regulation to agree with the current federal NSR rule, the proposed amendment is designed to streamline the NSR program and provide sources with regulatory certainty.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Approximately 43 entities are currently subject to the administrative regulation. These entities potentially affected by the proposed amendment to the administrative regulation include the construction or modification of major stationary sources that construct in areas designated nonattainment and those that build or modify in the future. While affected sources will be in all industry groups, the majority of sources potentially affected by the amendment are expected to be in the following groups: electric utilities,

-2224-
petroleum refining, chemical processes, natural gas transport, pulp and paper mills, paper mills, automobile manufacturing, and pharmaceuticals.

(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 includes changes in the NSR applicability requirements for modifications to allow source more flexibility to respond to rapidly changing markets and to plan for future investments in pollution control and prevention technologies. The changes are intended to provide greater regulatory certainty, administrative flexibility, and permit streamlining, while ensuring the current level of environmental protection and benefit derived from the NSR program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: The division will not incur any additional costs to implement the administrative regulation.
   (b) On a continuing basis: There will be no additional costs associated with the implementation of the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's operating budget will be used to implement and enforce the 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 is necessary to implement the proposed amendment to the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The administrative applies to major stationary sources or major modifications, which are defined to be sources that have a potential to emit of 100 tons per year or more of a regulated NSR pollutant, and modifications that result in a significant net emissions increase.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 50 C.F.R. 51.166 as amended at 67 Fed. Reg. 60166 (December 31, 2002).

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.22-120.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires any source described in Section 1 of the proposed administrative regulation to show that construction or modification of the source will not cause a net increase in pollution; will not create a delay in meeting the NAAQS; and that the source will install and use control technology that achieves the lowest achievable emissions rate (LAER).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The amendments to the administrative regulation are identical to the amendments to the federal regulation and will impose no more stringent requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect any unit, part, or division of local government operating a unit that meets the applicability determination of Section 1 of the administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. The most likely aspects of service of local government that are potentially affected by the administrative regulation are electric utilities and natural gas transport.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues. Expenditures (+/-): Although it cannot be quantified, this administrative regulation is designed result in a reduction in costs to the regulated community.

Other Explanation: There is no further explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections

(Amendment)


RELATES TO: KRS Chapter 196, Chapter 197, Chapter 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 and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Penitentiary.

Section 1. Incorporation by Reference. (1) Kentucky State Penitentiary policies and procedures, March 11, 2004, (July 8, 2003) are incorporated by reference. Kentucky State Penitentiary policies and procedures include:

KSP 01-02-01 Public Information and Media Communications
KSP 02-01-02 Inmate Canteen
KSP 02-08-02 Inventory Control and Warehouse Operations
KSP 02-11-01 Requisition and Purchase of Supplies and Equipment
KSP 02-12-02 Inmate Funds
KSP 05-02-01 Management Information System
KSP 06-01-01 Inmate Records
KSP 10-02-01 Special Management Operating Procedures, Living Conditions and Classification
KSP 10-02-05 Special Security Unit
KSP 10-04-01 Special Needs Inmates
KSP 11-06-01 Food Service Inspections
KSP 13-01-01 Pharmacy Procedures
KSP 13-02-01 Health Services
KSP 13-02-02 Organization of Medical Services
KSP 13-02-03 Continuity of Care
KSP 13-02-04 Levels of Care and Staff Training
KSP 13-02-05 Consultations
KSP 13-02-08 Health Records
KSP 13-02-09 Psychiatric and Psychological Services
KSP 13-02-12 Dental Services for Special Management Units

- 2225 -
VOLUME 30, NUMBER 10 – April 1, 2004

KSP 13-02-13 Optometric Services (Amended 4/8/98)
KSP 13-06-02 Informed Consent (Amended 4/14/98)
KSP 14-03-01 Marriage of Inmates (Amended 10/14/02)
KSP 14-04-01 Legal Services (Amended 10/14/96)
KSP 14-06-01 Inmate Grievance Procedure (Amended 3/15/03)
KSP 15-06-01 Adjustment Procedures (Amended 1/14/03)
KSP 16-01-01 Visiting Program (Amended 4/14/99)
KSP 16-02-01 Inmate Correspondence (Amended 3/11/04)
KSP 16-03-02 Inmate Telephone Access (Amended 3/11/03)
KSP 16-04-01 Inmate Packages (Amended 7/12/00)
KSP 17-01-01 Inmate Personal Property (Effective 3/12/97)
KSP 17-01-02 Disposition of Unauthorized Property (Effective 3/12/97)
KSP 17-01-03 Procedures for Providing Clothing, Linens and Other Personal Items (Amended 3/11/04)
KSP 17-01-04 Property Room, Clothing Storage and Property Inventory Control (Amended 1/14/03)
KSP 17-02-01 Inmate Reception and Orientation (Amended 10/14/02)
KSP 18-01-01 General Guidelines and Functions of the Classification Committee (Amended 1/14/03)
KSP 18-06-01 Classification Document (Amended 7/12/00)
KSP 18-10-01 Preparole Progress Report (Amended 7/12/00)
KSP 18-15-01 Protective Custody Unit (Amended 4/15/02)
KSP 19-04-01 Inmate Work Programs and Safety Inspections of Inmate Work Locations (Amended 7/12/00)
KSP 19-04-02 Unit Classification Committee and Inmate Work Assignments (Amended 3/11/03)
KSP 19-05-01 Correctional Industries (Amended 1/14/03)
KSP 20-04-01 Educational Programs (Amended 4/15/02)
KSP 22-04-01 Arts and Crafts Program (Amended 12/12/01)
KSP 23-01-03 Religious Services (Added 12/12/01)
KSP 25-01-01 Release Preparation Program (Added 12/12/01)
KSP 25-01-02 Inmate Release Procedure (Amended 7/8/03)
KSP 25-10-01 Discharge of Inmates by Shock Probation (Added 7/12/00)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40624-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: March 10, 2004
FILED WITH LRC: March 11, 2004 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 27, 2004 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing within five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 3, 2004. 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: Nathan Church, Procedures Coordinator, Office of Legal Services, Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40624, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jack Damron
(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 the Kentucky State Penitentiary including the responsibilities of Kentucky State Penitentiary 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 the operations of Kentucky State Penitentiary.
(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 Kentucky State Penitentiary employees and the inmate population as to their duties 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 Kentucky State Penitentiary in compliance with ACA Standards, show compliance with CPP, and show actual practice of the institution.
(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 Kentucky State Penitentiary.
(d) How the amendment will assist in the effective administration of the statutes: This will help Kentucky State Penitentiary to operate more efficiently.
(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 336 employees of the correctional institutions, 806 inmates, 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:
(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 2003-2004 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 United States Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Anendment)

501 KAR 6:090. Frankfort Career Development Center.

RELATES TO: KRS Chapter 196, Chapter 197, Chapter 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470,
VOLUME 30, NUMBER 10 – April 1, 2004

439.580, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety 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 Frankfort Career Development Center.

Section 1. Incorporation by Reference. (1) Frankfort Career Development Center policies and procedures, March 11, 2004 [2003], are incorporated by reference. Frankfort Career Development Center policies and procedures include:

FCDC 01-04-01 Roles of Consultants, Contract Personnel, Volunteers, Employees, and Employees of Other (Amended 3/11/03)
FCDC 01-09-01 Organization and Assignment of Responsibilities (Amended 1/13/03)
FCDC 02-02-01 Inventory Control (Amended 3/11/04)
FCDC 02-09-01 Inmate Account (Amended 1/13/03)
FCDC 02-10-01 Fiscal Management and Control (Amended 3/11/04)
FCDC 02-11-01 Fiscal Management: Accounting Procedures (Amended 1/13/03)
FCDC 02-12-01 Fiscal Management: Checking Accounts (Amended 3/11/04)
FCDC 02-13-01 Purchasing and Receiving (Amended 3/11/03)
FCDC 06-02-01 Offender Records (Amended 1/13/03)
FCDC 08-01-01 Fire Safety Practices (Amended 3/11/04)
FCDC 09-09-08 Searches and Contraband Procedures: Disposition of Contraband (Amended 11/14/95)
FCDC 11-03-01 Food Service; General Guidelines (Amended 3/11/04)
FCDC 11-04-02 Menu, Nutrition and Special Diets (Amended 3/11/04)
FCDC 11-06-01 Inspection and Sanitation (Amended 3/11/04)
FCDC 11-07-01 Purchasing and Storage of Food Products (Amended 3/11/04)
FCDC 12-03-01 Laundry, Clothing, Hygiene and Grooming Services (Amended 4/15/02)
FCDC 12-04-01 Safety and Sanitation Practices and Inspections (Amended 8/14/97)
FCDC 13-01-01 Use of Pharmaceutical Products (Amended 4/15/02)
FCDC 13-01-02 Medical Emergencies and Medical Psychiatric Transfers (Amended 4/15/02)
FCDC 13-01-03 Informed Consent (Amended 3/15/99)
FCDC 13-02-01 Inmate Medical Screenings and Health Evaluations (Amended 3/11/04)
FCDC 13-03-01 Psychiatric and Psychological Services (Amended 4/15/02)
FCDC 13-03-01 Family Notification: Serious Illness, Injury, Major Surgery or Death (Amended 11/14/95)
FCDC 13-06-01 Chronic and Convalescent Care (Amended 4/15/02)
FCDC 13-08-01 Sick Call and Physician’s Weekly Clinic (Amended 4/15/02)
FCDC 13-09-01 Management of Serious and Infectious Diseases (Amended 4/15/02)
FCDC 13-11-01 Health Education: Provision of Special Health Care Needs (Amended 4/15/02)
FCDC 13-13-01 Physicians Referrals (Amended 4/15/02)
FCDC 13-20-01 Physically Handicapped (Amended 11/14/95)
FCDC 13-15-01 Routine and Emergency Dental Appointments (Amended 4/15/02)
FCDC 13-16-01 Routine and Emergency Eye Examinations (Amended 4/15/02)
FCDC 14-01-01 Prohibiting Inmate Authority Over Other Inmates (Amended 1/13/03)
FCDC 14-02-01 Inmate Grievance System (Amended 11/14/95)

FCDC 14-03-01 Inmate Rights and Responsibilities (Amended 1/13/03)
FCDC 14-04-01 Legal Services Program (Amended 3/11/04)
FCDC 15-01-01 Good Time Credits (Amended 4/15/02)
FCDC 15-01-02 Restoration of Forfeited Good Time (Amended 1/13/03)
FCDC 15-03-01 Due Process and Disciplinary Procedure (Amended 1/13/03)
FCDC 15-04-01 Detention Orders and Protective Custody Requests (Amended 8/14/97)
FCDC 16-01-01 Visiting (Amended 1/13/03)
FCDC 16-02-01 Inmate Correspondence (Amended 3/11/04)
FCDC 16-03-01 Inmate Access to Telephones (Amended 4/15/02)
FCDC 17-01-01 Inmate Property Control (Amended 3/11/04)
FCDC 17-02-01 Assessment and Orientation (Amended 3/11/04)
FCDC 18-01-01 Inmate Classification and Review (Amended 8/14/97)
FCDC 19-01-01 Security and Operation of the Governmental Services Program (Amended 3/11/04)
FCDC 19-02-01 Inmate Work Programs (Amended 3/11/04)
FCDC 20-01-01 Academic and Vocational Education (Amended 1/13/03)
FCDC 22-01-01 Privilege Trips (Amended 4/15/02)
FCDC 22-02-01 Recreation and Inmate Activities (Amended 4/15/02)
FCDC 23-01-01 Religious Services (Amended 3/11/04)
FCDC 24-01-01 Social Services Program (Amended 3/11/04)
FCDC 24-02-01 Substance Abuse Programs (Amended 3/11/04)
FCDC 25-01-01 Escorted Leaves (Amended 3/11/04)
FCDC 25-03-01 Release Preparation Program (Amended 4/15/02)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, [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.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: March 10, 2004
FILED WITH LRC: March 11, 2004 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 27, 2004 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing within five (5) weekdays 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 3, 2004. 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: Nathan Church, Procedures Coordinator, Office of Legal Services, Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602, phone (502) 564-2024, fax (502) 564-6494.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jack Damron, Staff Attorney Manager

(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 the Frankfort Career Development Center which directs institutional employees in the safe and appropriate control of the inmate population and security of the institution.
(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 the operation of the Frankfort Career Development Center.
(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 Frankfort Career Development Center employees and the inmate population as to their duties 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 will bring the Frankfort Career Development Center policies and procedures up to date and bring policies into line with Corrections policies and procedures.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 196.035 and 197.020.
(c) Flow 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: The amendment 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 institution and the public.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: 42 employees of the Frankfort Career Development Center and 205 inmates and all visitors to the Frankfort Career Development Center.

(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: Frankfort Career Development Center employees and inmate population will have a clearer understanding of the policies and areas of responsibility.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) 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 applies 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.


VOLUME 30, NUMBER 10 – April 1, 2004

JUSTICE AND PUBLIC SAFETY CABINET
Department Of State Police

(AMENDMENT)

502 KAR 15:010. Accident reports.

RELATES TO: KRS 189.635
STATUTORY AUTHORITY: KRS 15A.160, 189.635
NECESSITY, FUNCTION AND CONFORMITY: KRS 15A.160 and 189.635 provide that the Secretary of the Justice and Public Safety Cabinet may adopt such administrative regulations necessary to carry out the provisions of KRS 189.635. This administrative regulation establishes the Justice and Public Safety Cabinet's policy regarding administration of the uniform police traffic accident program adopted pursuant to KRS 189.635.

Section 1. The "Uniform Police Traffic Accident Report" form published by the Justice and Public Safety Cabinet shall be the official vehicle accident report form for all law enforcement agencies in Kentucky.


Section 3. A law enforcement agency whose officers make a report of a traffic accident shall be termed an originating agency with respect to such report and shall retain a copy of each report. Responsibility for providing copies of traffic accident reports shall remain with the originating agency.

Section 4. A law enforcement agency receiving a vehicle accident report pursuant to KRS 189.635 shall within ten (10) days thereafter forward the original copy of such report to the "CRASH Section, Criminal Identification and Records Branch" [Traffic-Records Section] Department of State Police, Justice and Public Safety Cabinet, Frankfort, Kentucky 40601, in envelopes provided by the cabinet. The report shall be mailed flat and not folded.

Section 5. This administrative regulation shall be applicable to vehicle accidents occurring on or after July 1, 1975.

(2) It may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHEN B. PENCE, Lieutenant Governor, Secretary
MARK MILLER, Commissioner
APPROVED BY AGENCY: March 4, 2004
FILED WITH LRC: March 11, 2004 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2004 at 10 a.m. EST in Room 105, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 16, 2004, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Kentucky State Police needs to provide accommodation, please notify us of this requirement by April 16, 2004. This request does not have to be in writing. 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. Written comments shall be accepted until May 3, 2004. 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: Terry D. Edwards, Legal Counsel, Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6318, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry D. Edwards

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation establishes the Justice and Public Safety Cabinet's policy regarding administration of the uniform police traffic accident program adopted pursuant to KRS 189.635.
   (b) The necessity of this administrative regulation: To create a uniform traffic accident program that will eliminate confusion in reporting traffic accidents from various counties and regions.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 189.635 charges the Justice and Public Safety Cabinet with promulgating regulations to adopt a uniform process for making and storing traffic accident reports.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation carries out the Justice and Public Safety Cabinet's mandate of creating and administering a uniform police traffic accident 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: None.
   (b) The necessity of the amendment to this administrative regulation: None.
   (c) How the amendment conforms to the content of the authorizing statutes: None.
   (d) How the amendment will assist in the effective administration of the statutes: None.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies responsible for making traffic accident reports.

(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 law enforcement agencies with standards different from those above, will have to amend their accident report forms and records retention policies.

(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:
   (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 cabinet has not increased fees and does not anticipate a need for increased fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? No. It is applied equally to all who are affected.

JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(Amendment)


RELATES TO: KRS 17.115, 17.140, 17.147, 17.151, 17.1522.

- 2229 -
VOLUME 30, NUMBER 10 – April 1, 2004

organization, signature of the individual requester, and a witness signature. In addition to the aforementioned personal identifiers, the form shall include sex, race, date of birth, Social Security number and previous addresses. The applicable forms are:

1. Request for KSP Conviction Records/Housing, 10/03 edition.

2. Request for Conviction Records/Emigration, 10/03 edition.

(d) In regard to employment criminal records checks. ["Non-conviction data," from the computerized Kentucky State Police files, shall be disseminated by the Department of State Police only, pursuant to KRS 616.230.]

(3) Juvenile-records.—Dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need of supervision shall not be released to the public without court order.

(4) Furnishings of sex crime convictions to potential employers of persons with authority over children. Criminal history record information of a conviction nature involving specified sex crimes shall be disseminated to potential employers of those individuals that have authority over children. Those respective sex-related crimes shall be: rape 1st, 2nd, and 3rd degree; sodomy 1st, 2nd, 3rd and 4th degree; sexual abuse 1st, 2nd and 3rd degree; sexual misconduct; indecent exposure; prostitution; promoting prostitution 1st, 2nd and 3rd degree; permitting prostitution; incest; use of a minor in a sexual performance; promoting a sexual performance by a minor; distributing or selling material portraying a sexual performance by a minor; advertising material portraying a sexual performance by a minor; and using minors to distribute material portraying a sexual performance by a minor and unlawful transaction with a minor in the 1st degree.

(a) To obtain criminal history record information regarding sex-related convictions, a perspective employer must complete a form prescribed by the Department of State Police. The form shall be inclusive of a waiver that releases the Kentucky State Police from liability with regard to the dissemination of sex-related conviction data. The form shall also include the name of the employer, signature of the perspective employer, signature of the perspective employee/volunteer, witness signature, and a space for a thumb print of the perspective employee/volunteer. In addition to the aforementioned personal identifiers, the form shall include sex, race, date of birth, Social Security number and previous addresses.

(b) The prospective employer shall be responsible for the completion of the appropriate form as indicated in paragraph (a) of this subsection and shall submit a check/money order for ten (10) dollars, made payable to the Kentucky State Treasurer.

(c) If the criminal records check is nonemployment in nature, the applicant shall be responsible for the completion of the form as listed in paragraph (c) of this subsection and shall submit a check/money order in the amount of ten (10) dollars, made payable to the Kentucky State Treasurer. In order to expedite the response to the respective employer and notification of record check to the employer/volunteer, two (2) self-addressed stamped envelopes (one (1) to the record subject, one (1) to the employer) for return results of criminal history record analysis shall be submitted with the initial record request.

Section 2. As outlined in 502 KAR 30:040, the computerized criminal history record information system, as well as criminal justice and law enforcement agencies receiving CHRl from the computerized criminal history records system shall log all disseminations of CHRl. Said log shall contain at least the following information: the name of the agency and individual receiving CHRl, the date of release, the individual to whom the CHRl relates, the items of CHRl released, and, in the case of secondary dissemination, the agency which provided the CHRl. Transaction logs shall be maintained in a records subject accessible state for at least twelve (12) months from the date of CHRl dissemination.

Section 3. Incorporation by reference. The following documents are incorporated by reference:

(1) "Request for Conviction Records/Employment", 10/03 edition.

(2) "Request for Conviction Records/Child Care", 10/03 edition.

(3) "Request for Conviction Records/Adoptions and Foster Homes", 10/03 edition.

(4) "Request for Conviction Records/Lottery", 10/03 edition.

(5) "Request for Conviction Records/Long-Term Care Facility", 10/03 edition.

(6) "Request for Conviction Records/Kentucky Department of Mines and Minerals", 10/03 edition.

(7) "Request for Conviction Records/Fire Department, Ambulance Service and Rescue Squad", 10/03 edition.

(8) "Request for Conviction Records/Miners", 10/03 edition.

(9) "Request for Conviction Records/Nonpublic Schools", 10/03 edition.

(10) "Request for Conviction Records/Board of Education", 10/03 edition.

(11) "Request for Conviction Records/Legislative Research Commission", 10/03 edition.

(12) "Request for Conviction Records/Housing", 10/03 edition.

(13) "Request for Conviction Records/Emigration", 10/03 edition.

(14) "Request for Conviction Records/Public Schools", 10/03 edition.

(15) All of the foregoing referenced documents may be inspected, copied or obtained, subject to applicable copyright law, at the Department of State Police, Post 12, 1250 Louisville Road, Frankfort, Kentucky 40601, (502) 227-2221, Monday through Friday from 8 a.m. until 4:30 p.m.

STEPHEN B. PENCE, Lieutenant Governor, Secretary MARK MILLER, Commissioner, APPROVED BY AGENCY: March 5, 2004

FILED WITH LRC: March 12, 2004 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2004 at 10 a.m. EST in Room 105, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 2004, five working days prior to the hearing, of their intent to attend. If you have a disability for which the Kentucky State Police needs to provide accommodation, please notify us of this requirement by April 15, 2004. This request does not have to be in writing. 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. Written comments shall be accepted until May 3, 2004. 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: Terry D. Edwards, Legal Counsel, Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6318, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry D. Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the provisions regarding dissemination of data from the Kentucky Centralized Criminal History Record Information System.

(b) The necessity of this administrative regulation: KRS 17.150(6) provides that the Secretary of Justice shall adopt administrative regulations necessary to carry out the provisions of the Kentucky Centralized Criminal History Record Information System.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth conditions under which the Kentucky Centralized Criminal History Record Information System may disseminate data.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation
provides the guidelines for the cabinet and informs the public of the requirements and conditions under which the Kentucky Centralized Criminal History Record Information System may disseminate data.

(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 updates the references and forms and increases the fee charged for a Kentucky criminal history record check from $4 to $10.

(b) The necessity of the amendment to this administrative regulation: To update the current procedures and forms and to provide adequate funding to provide this service.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 17.150(6) provides that the Secretary of Justice shall adopt administrative regulations necessary to carry out the provisions of the Kentucky Criminal History Records Information System and these amendments provide the most current procedures and forms used as well as updates the fee charged.

(d) How the amendment will assist in the effective administration of the statutes: The increase in fees is to cover the increased operating costs of providing the service which include but are not limited to the following:

1. The cost of performing criminal records checks for CCDW applicants. CCDW funding provides support only for the CCDW section. It does not provide support for the cost to Records for researching dispositions of offenses, as well as whether the offense would constitute a disqualifier under state and/or federal law. The increase to $10 would assist in defraying these expenses.

2. Records provides research in regard to Sex Offender Registry registrants.

3. Records now uses security paper, which is more expensive than the standard paper that was formerly used, but provides a benefit to requesters by increasing security and protecting privacy.

4. The increase would assist in defraying the costs of developing, implementing, and maintaining the Automated Accounting System. The Automated Accounting System provides a substantial benefit in business practice by significantly reducing the turnover/response time needed.

5. The increase would assist in defraying mailing expenditures.

6. The Commonwealth has increased the number of criminal records checks that are voluntary or statutorily mandated, including but not limited to, nonpublic schools, which has increased the duties and expenses of KSP Records.

7. The KSP has recently deployed a new computerized criminal history system (CCH). The CCH is used in performing criminal records checks. As a result, additional training of employees on its use has resulted in increased cost to KSP. Once the one-year warranty period for the CCH has expired, the KSP will have additional maintenance costs, as well as enhancement expenditures, that will result in significant costs to the KSP. Also, training initiatives have been required that have resulted in a financial impact to the KSP. Therefore, these funds would assist in defraying these costs.

8. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons and entities who obtain Kentucky Centralized Criminal History Record Information System including all public school districts, daycare facilities, long-term care facilities, housing providers, nonpublic schools, general employment, Cabinet for Health and Family Services, Kentucky Lottery Corporation, Kentucky Department of Mines and Minerals, and the Legislative Research Commission. Approximately 118,000 criminal history record checks are performed each year. Additionally, due to the requirements of the Patriot Act, the KSP will process an additional 36,000 criminal history record checks for applicants of commercial drivers’ license/hazardous materials over the next 4 years.

9. 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 above-named groups will incur an additional cost of $6 per record check.

10. Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None, the fee increase will cover costs.

11. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.

12. 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: See responses to 2(2) and 2(3).

13. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes, the fee is increased from $4 to $10.

14. TIERING: Is tiering applied? No. The process is applied equally to all that receive the service.

JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(Amendment)


RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.040, 16.050, 16.080
NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 requires the Commissioner of State Police to prescribe minimum physical requirements for persons appointed as state police officers, and to conduct tests to determine the fitness and qualifications of applicants. KRS 16.080 authorizes the commissioner to adopt administrative regulations for the enlistment of officers. KRS 16.050 requires the State Police Personnel Board to adopt administrative regulations to provide for competitive examination as to the fitness of applicants for employment as officers, and for the establishment of eligible lists for employment based upon competitive examination. This administrative regulation establishes the grounds for disqualification from competition in the process.

Section 1. Applicants shall be disqualified from further participation in the selection process or removed from the register if it is determined that:

1. An applicant does not meet any one (1) of the qualifications for appointment as an officer;

2. An applicant has made a false statement of material fact on the application, or in response to any questions or requests for information during the selection process;

3. An applicant has used or attempted to use political influence, coercion or bribery to secure an advantage in any phase of the selection process;

4. An applicant has cheated during the course of any examination required during the selection process, or has attempted to gain an advantage over other applicants by any dishonest or intentionally misleading act or omission;

5. An applicant has failed to comply with any instructions from the department relating to the selection process;

6. An applicant has been dismissed for cause from any public agency, or has resigned while charges of misconduct were pending;

7. An applicant has been convicted of a felony or any crime of moral turpitude;

8. An applicant is a current user of a controlled substance, unless prescribed by a physician;

9. An applicant is addicted to or is a habitual user of any controlled substance or intoxicant;

10. An applicant has more than six (6) driver demerit points against his operator’s license;

11. An applicant tests positive for an unlawful controlled substance as determined by a blood or urine analysis;

12. An applicant who fails to comply with the commissioner’s standards for appearance and demeanor before an officer of the Kentucky State Police.

Section 2. If cause exists to believe that an applicant has committed an act or omission which if true would result in disquali-
fication, the department may defer any further processing of the
application, or may condition further processing upon successful
completion of a polygraph examination conducted by a licensed
examiner employed by the department.

Section 3. An applicant who is disqualified or upon whose
application further processing is deferred shall be informed within
ten (10) working days of the reason for the disqualification or deferral,
and of the right to appeal to the State Police Personnel Board.

STEPHEN B. PENCE, Lieutenant Governor, Secretary
MARK MILLER, Commissioner
W. O. BRADLEY, Chairman
APPROVED BY AGENCY: March 4, 2004
FILED WITH LRC: March 11, 2004 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
April 22, 2004 at 10 a.m. EST in Room 105, Kentucky State Police,
919 Versailles Road, Frankfort, Kentucky 40601. Individuals inter-
ested in being heard at this hearing shall notify this agency in writ-
ing by April 15, 2004, five workdays prior to the hearing, of their
intent to attend. If you have a disability for which the Kentucky
State Police needs to provide accommodation, please notify us of
this requirement by April 15, 2004. This request does not have to
be in writing. 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 un-
less a written request for a transcript is made. If you do not wish to
be heard at the public hearing, you may submit written comments
on the proposed administrative regulation. Written comments shall
be accepted until May 3, 2004. 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: Terry D. Edwards, Legal Counsel, Office
of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601,
phone (502) 695-6318, fax (502) 573-1656.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry D. Edwards
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation
amends 502 KAR 45:025 to clarify the Kentucky State Police’s
policy on disqualification for state police applicants.
(b) The necessity of this administrative regulation: Clarify the
Kentucky State Police’s policy on disqualification based upon use
of controlled substances and intoxicants.
(c) How this administrative regulation conforms to the content
of the enacting statutes: This regulation explains the Kentucky
State Police policy on behaviors that will disqualify Kentucky State
Police applicants.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This regulation
clarifies current policy.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: This amendment updates the state regulation by clar-
ifying that habitual use of controlled and intoxicating substances will
disqualify an applicant regardless of whether the individual is add-
dicted to them.
(b) The necessity of the amendment to this administrative
regulation: Puts applicants on notice that the behaviors that will
disqualify an applicant is the habitual use and not the state of being
addicted to the substances.
(c) How the amendment conforms to the content of the
authorizing statutes: The Kentucky State Police is charged with
selecting police applicants of appropriate character to become
Kentucky State Police officers and to promulgate rules and regula-
tions for the governing and operation of the department, including
establishing the disqualifications in this statute.
(d) How the amendment will assist in the effective administra-
tion of the statutes: This will allow the cabinet to apply and enforce
current policies that disqualify habitual users of controlled sub-
stances and intoxicants that have not been diagnosed as addicts.
(3) List the type and number of individuals, businesses, organi-
izations, or state and local governments affected by this adminis-
trative regulation: None
(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: None
(5) Provide an estimate of how much it will cost to implement
this administrative regulation: None
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: None
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: The cabinet
has not increased fees and does not anticipate a need for in-
creased fees.
(8) State whether or not this administrative regulation estab-
lished any fees or directly or indirectly increased any fees: No
(9) TIERING: Is tiering applied?: No. The disqualifiers are ap-
plied equally to all applicants.

JUSTICE AND PUBLIC SAFETY CABINET
Department Of State Police
(Amendment)

502 KAR 45:115. Appeals.

RELATES TO: KRS 16.050
STATUTORY AUTHORITY: KRS 16.050
NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050
directs that the State Police Personnel Board shall hear appeals
from applicants. This administrative regulation establishes the
procedure for appeals.

Section 1. Applicants who are disqualified or deferred and who
believe that the disqualification or deferral was unlawful or that they
have been discriminated against because of their race, religion,
sex, age, disability, ethnic origin or political affiliation may initiate
an appeal to the board by filing a statement of appeal in the office
of the commissioner.

Section 2. The statement of appeal shall be in writing and shall
be dated, signed, and sworn. It shall set forth with particularly
the specific acts or omissions that are alleged to be discriminatory or
otherwise unlawful. The statement of appeal shall be filed within
thirty (30) days of the date of the act or omission which forms the
basis for the appeal, or, if more than thirty (30) days have elapsed,
within ten (10) days of the date that the applicant received notice or
first became aware of the act or omission, if no notice was given.

Section 3. Within thirty (30) days of the receipt of the statement
of appeal by the commissioner, legal counsel for the department
shall file a response which shall be served upon the applicant ap-
peellant. No later than sixty (60) days thereafter, the board shall
consider the statement of appeal and the response. The board
may rule upon the appeal based upon the statement of appeal and
response, or in its discretion may order a hearing, with at least ten
(10) days prior notice to the applicant appellant. Appellant appli-
cant may elect to waive, in writing, the ten (10) day notice require-
ment.

Section 4. The board in its discretion may employ hearing offi-
cers who are attorneys to conduct the hearings and make advisory
findings of fact, conclusions of law and recommendations. At the
hearing, the board shall not be bound by rules of order, evidence,
procedure except as it may itself establish.

Section 5. The board shall render a decision within six (6)
months of the date of filing of the statement of appeal, and shall
enter an order which sets forth the appropriate relief.

STEPHEN B. PENCE, Lieutenant Governor, Secretary
MARK MILLER, Commissioner
W. O. BRADLEY, Chairman

APPROVED BY AGENCY: March 4, 2004
FIL FED WITH I.R.C: March 11, 2004 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2004 at 10 a.m. EST in Room 105, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 2004, five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Kentucky State Police needs to provide accommodation, please notify us of this requirement by April 15, 2004. This request does not have to be in writing. 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. Written comments shall be accepted until May 3, 2004. 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: Terry D. Edwards, Legal Counsel, Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6316, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry D. Edwards

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets forth the procedure for appeals from applicants pursuant to KRS 16.050.
(b) The necessity of this administrative regulation: This regulation is necessary to comply with KRS 16.050 which provides that the State Police Personnel Board shall set forth the rules and procedures for appeals from applicants.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 16.050.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth the procedures for appeals from applicants pursuant to KRS 16.050.

(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 clarifies that an applicant may waive the 10 day notice of hearing requirement.
(b) The necessity of the amendment to this administrative regulation: To clarify an applicant's right to have an appeal hearing before the State Police Personnel Board earlier than 10 days from receipt of notice.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 16.050 allows the State Police Personnel Board to set forth the procedures for an applicant who wishes to file an appeal and this amendment simply clarifies the process.
(d) How the amendment will assist in the effective administration of the statutes: KRS 16.050 allows the State Police Personnel Board to set forth the procedures for an applicant who wishes to file an appeal and this amendment simply clarifies the process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All applicants who wish to file an appeal to the State Police Personnel Board pursuant to KRS 16.050.

(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 merely clarifies existing practice.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initial: None
(b) On a continuing basis: None
(c) 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: The cabinet has not increased fees and does not anticipate a need for increased fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? No. The appeal process applies equally to all applicants

TRANSPORTATION CABINET
Office of Minority Affairs
(Amendment)

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.

RELATES TO: KRS Chapter 96A, Chapter 174, Chapter 176, Chapter 177, Chapter 183, 13 C.F.R. 121, 49 C.F.R. 23, 15 U.S.C. 637

STATUTORY AUTHORITY: KRS 174.080, 49 C.F.R. Part 26 [23]

NECESSITY, FUNCTION, AND CONFORMITY: 49 C.F.R. Part 26, requires that recipients of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991, (ISTEA) or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21) from the United States Department of Transportation (USDOT) implement a program to ensure nondiscrimination in the award and administration of USDOT-assisted contracts in its highway financial assistance programs. The Kentucky Transportation Cabinet, as a recipient of these funds, is required by the federal regulation to have a program that requires the participation of disadvantaged, minority and women business enterprises in contracts financed in whole or in part with these funds. This administrative regulation establishes the requirements for certification of DBE firms. [49 C.F.R. Part 26 requires that most recipients of funds from the United States Department of Transportation (USDOT) implement a program to support the fullest possible participation of firms in businesses owned and controlled by minorities, women, and economically disadvantaged individuals in USDOT programs. The Kentucky Transportation Cabinet as a recipient of USDOT funds is required by 49 C.F.R. 23.2 to have a program of certification of disadvantaged, minority and women business enterprises. This administrative regulation establishes the procedures and criteria for the Transportation Cabinet's certification program. This administrative regulation conforms to the federal mandate. It is identical to the certification criteria of the federal mandate spelled out in 49 C.F.R. 23. However, each state is required to establish its own certification procedures. It also sets forth the requirements that certified and prequalified DBE firms attend an orientation program and management development course to increase the probability of the firm remaining certified.]

Section 1. Definitions. (1) "Affiliation" has the same meaning as it is defined in 49 C.F.R. Part 26.5.
(2) "Alaska native" has the same meaning as it is defined in 49 C.F.R. Part 26.5.
(3) "Alaskan Native Corporation" has the same meaning as it is defined in 49 C.F.R. Part 26.5.
(4) "Applicant" or "firm" means any corporation, partnership, sole proprietorship, or joint venture applying with the Transportation Cabinet for certification and continuation as a disadvantaged, minority or women business enterprise.
(5) [60] "Approval" means that the applicant has been determined by the DBE Certification Committee to meet the [meets]
disadvantaged, minority or women business enterprise or joint venture eligibility criteria as outlined in 49 C.F.R. Part 26 [23 and as required by this administrative regulation].

(6) "Cabinet" means the Transportation Cabinet.

(7) [69] "Certification" means the process whereby the Transportation Cabinet determines if an applicant meets disadvantaged; minority or women business enterprise or joint venture criteria.

(8) "Commercially-useful function" is performed by a DBE when it is responsible for the execution of the work of a contract and is carrying out its responsibility by actually performing, maintaining, and supervising the work involved. With respect to furnishing materials and supplies as part of the DBE contract, the DBE performs a commercially-useful function when the DBE is responsible for negotiating price, determining quality and quantity, ordering materials, and installing (where applicable) and paying for the material itself. A DBE does not perform a commercially-useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

(9) "Compliance" means that a recipient, person or entity has met the requirements of 49 C.F.R. Part 26.

(10) "Contractor" has the same meaning as defined in 49 C.F.R. 26.5.

(11) [74] "Challenge" means an action of a third party which takes issue with the socially- and economically-disadvantaged status of—disadvantaged; minority or women business enterprise—program participants or applicants for DBE certification.

(6) "Decertified" means that a firm or business enterprise which has been certified by the Transportation Cabinet [which certification has not expired] as a disadvantaged; minority or women business enterprise or joint venture has been determined to be ineligible and is, therefore, no longer entitled to the rights and privileges accorded to those who are certified by the Transportation Cabinet as disadvantaged; minority or women business enterprise or joint venture.

(12) [60] "Denial" means the applicant does not meet disadvantaged; minority or women business enterprise or joint venture eligibility criteria as outlined in 49 C.F.R. Part 26 [23 and as required by this administrative regulation.

(13) "Department" or "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

(14) [77] "Disadvantaged business enterprise" or "DBE" means a for profit small business concern [as defined pursuant to Section 3 of the Small Business Act (15 U.S.C. 637(a)) and implementing regulations]:

(a) That (Which) at least fifty-one (51) percent owned by one (1) or more individuals who are both socially and economically disadvantaged [persons]; or, in the case of a corporation, in which [any publicly-owned business], at least fifty-one (51) percent of the stock [of which] is owned by one (1) or more such [socially- and economically-disadvantaged] individuals; and

(b) Whose management and daily business operations are controlled by one (1) or more of the socially and economically disadvantaged individuals who own it.

(15) "Good faith efforts" means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

(16) "Immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law or father-in-law.

(17) "Indian tribe" has the same meaning as defined in 49 C.F.R. 26.5.

(18) "Ineligibility complaint" means an action of a third party alleging that a firm is ineligible to participate in the DBE program.

(19) [68] "Joint venture" means an association of a DBE firm and one (1) or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly-defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest [of (2)-or more businesses to perform a specified business contract for profit for which purpose the businesses combined their property, capital, efforts, skills and knowledge].

(20) [69] "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa);

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);

(d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);

(e) American Indian and Alaskan native (a person having origins in any of the original peoples of North America); or

(f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)).

(21) "Native Hawaiian" has the same meaning as defined in 49 C.F.R. Part 26.5.

(22) "Native Hawaiian Organization" has the same meaning as defined in 49 C.F.R. Part 26.5.

(23) "Noncompliance" means that a recipient has not correctly implemented the requirements of 49 C.F.R. Part 26.

(24) [60] "Minority business enterprise" or "MBE" means a small-business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations (15 U.S.C. 637(a)), which is owned and controlled by one (1) or more minorities or women. This definition applies only to financial assistance programs. For purposes of this part, owned and controlled means a business:

(a) Which is at least fifty-one (51) percent owned by one (1) or more minorities or women, or in the case of a publicly owned business, at least fifty-one (51) percent of the stock of which is owned by one (1) or more minorities or women; and

(b) Whose management and daily business operations are controlled by one (1) or more such individuals.

(141) "Notice" means written notice from the Transportation Cabinet or Office of Minority Affairs delivered certified mail to the business address listed on the application form.

(25) [42] "On-site inspection" means conducting an interview with principals of the firm at its primary place of business, reviewing business-related documents, and inspecting business facilities or equipment.

(26) "Personal net worth" means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: the individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his own or her own share of assets held jointly or as community property with the individual's spouse.

(27) [42] "Prequalified" means that the Transportation Cabinet has approved the firm or business enterprise to perform certain functions on behalf of the cabinet in accordance with KRS Chapter 45A, 630 KAR Chapter 6, or 633 KAR 2:015.

(28) "Primary industry classification" has the same meaning as defined in 49 C.F.R. Part 26.5.

(29) "Primary recipient" for purposes of the cabinet's DBE Program is the Kentucky Transportation Cabinet.

(30) "Principal place of business" means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which the management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE Program purposes.

(31) "Program" has the same meaning as defined in 49 C.F.R. Part 26.5.

(32) "Race-conscious measure or program" is one that is—
cused specifically on assisting only DBEs, including women-owned DBEs.

(33) "Race-neutral measure or program" is one that is, or can be, used to assist all small businesses. For the purposes of this administrative regulation, race-neutral includes gender-neutrality.

(34) "Recipient" has the same meaning as defined in 49 C.F.R. Part 26.5.

(35) "Regular dealer" means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which materials required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase, sale or lease of the products in question. A regular dealer may not act exclusively as a supplier for contractors on federal-aid highway construction projects. In order to qualify as a regular dealer in bulk items, such as rock and asphalt, a company is not required to store the materials on the business site, but instead, the business can qualify as a regular dealer if it both owns and operates distribution equipment for the products.

(36) "Secretary" means the Secretary of the United States Department of Transportation or, as appropriate, the Secretary of the Kentucky Transportation Cabinet.

(37) Set-aside shall have the same meaning as defined in 49 C.F.R. Part 26.5.

(38) "Small Business Administration" or "SBA" means the United States Small Business Administration.

(39) "Small business concern" means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 C.F.R. Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 C.F.R. Part 26.5(b).

(40) [(44)] Socially and economically disadvantaged individual means any individual who is a citizen (individuals—means those individuals who are citizens) of the United States (or lawfully admitted permanent resident (residents)) and who is:

(a) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis;

(b) Any individual in the following groups, members of which are rebuttably presumed to be [are—black Americans, Hispanic Americans, native Americans, Asian Pacific Americans, Asian Indian Americans, or women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 4(e)(6) of the Small Business Act, United States Code, Title 15, Section 637]. The Transportation Cabinet shall have a rebuttable presumption that individuals listed in paragraphs (a) through (f) of this subsection are socially and economically disadvantaged.

1. (e) "Black Americans", which includes persons having origins in any of the black racial groups of Africa;

2. (b) "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

3. (e) "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or native Hawaiians;

4. (e) "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong);

5. "Subcontinent Asian—[and the Northern Marianas]; which includes persons whose origins are from India, Pakistan, [and] Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

6. "Women;"

7. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(41) "Subcontractor" is an individual, firm, or corporation who, with the written consent of the department, subcontracts any part of the contract. First tier subcontractors are those to whom the contractor subcontracts a portion of the work. Second tier subcontractors are those to whom a first tier subcontractor subcontracts a portion of the work.

(42) "Tribally-owned concern" has the same meaning as defined in 49 C.F.R. Part 26.5. [and]

(f) "Women;"

(5) "Women-owned enterprise" or "WBE" means a disadvantaged or minority business enterprise which is owned and controlled by one (1) or more women.

Section 2. Adoption of Governing Federal Material. [(44)] 49 C.F.R. 26 [23], effective October 1, 2003 [1967], is adopted without change. This federal regulator governs the federal Department of Transportation's and the Kentucky Transportation Cabinet's relationship with and responsibility to each other in the DBE/MBE/WBE Program. It further sets forth the basic requirements that [which] the Transportation Cabinet shall impose on firms desiring certification.

(2) The Disadvantaged Business Enterprise Program—Administrative Participants—Manual, Chapters I-VI, US Department of Transportation—Federal Highway Administration—Public Law No. 94-590, as amended, dated April 8, 1982, shall be used by the Transportation Cabinet for guidance and direction in administering the DBE program.

Section 3. Application Process. (1)(a) Application for certification or continuation of certification as a DBE shall be pursuant to and governed by the procedures set forth in 49 C.F.R. Part 26 Subparts D and E.

(b) An application for certification shall be submitted on the Uniform Certification Application published by the Federal Highway Administration in the 68 Federal Register 35542, effective June 16, 2003, [recertification as set forth in Section 6 of this administrative regulation as a DBE, MBE, or WBE shall be made to the Transportation Cabinet’s Office of Minority Affairs on form TC-10-5, Application for Certification—Schedule A.] (c) [§101] Each application form shall be completed in full.

(d) [§102] All documentation required by the application shall be attached to the completed application.

(e) [§103] The person signing the application shall be one (1) of the persons on whom the DBE, MBE, or WBE status is based and shall identify that person’s (his) position with the firm or business enterprise applying for certification.

(3) (a) The completed application shall be submitted to the Transportation Cabinet, Office of Minority Affairs.

(b) If the application is not complete, the Office of Minority Affairs shall return the application to the applicant firm requesting that the omitted information be included. An incomplete application shall not be considered by the Transportation Cabinet, Office of Minority Affairs. The Transportation Cabinet may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Transportation Cabinet to deny the application.

(5) (b) The Transportation Cabinet may certify out-of-state firms in accordance with 49 C.F.R. 26.81. All out-of-state firms must first be certified in their home state prior to becoming certified by the Transportation Cabinet. [perform an on-site inspection of any firm previously certified which is applying for recertification pursuant to Section 7 of this administrative regulation.]

(c) Failure of the applicant firm to participate in the on-site inspection shall be sufficient cause for the Transportation Cabinet to deny the application.

(d) An out-of-state applicant as a prerequisite to consideration of certification by the Transportation Cabinet shall be certified as a DBE, MBE, or WBE by the state transportation agency responsible for certifying firms under 49 C.F.R. Part 23 in the state in which the firm has residence.

- 2235 -
The Transportation Cabinet may request additional information in order to determine if an applicant firm should be certified. Failure of the applicant firm to provide the requested information shall be cause for the Transportation Cabinet to deny the application.

(6) During the period prior to the formal submittal of the application, the Transportation Cabinet or its supportive services contractor shall:
(a) When requested by the applicant, provide technical advice needed by the applicant in completing the application form and the supporting documentation;
(b) When requested by the applicant, advise the applicant firm of any apparent existing structural, organizational, or financial impediments to the firm’s certification; or
(c) Allow the applicant to make any structural, organizational, or financial changes to its organization necessary to bring the applicant into compliance with the requirements of this administrative regulation.

Section 4. Evaluation of Application. [(4) The Transportation Cabinet shall use the eligibility standards set forth in 49 C.F.R. Part 25, Subpart D [23-63] to determine the eligibility of a firm to be certified, or [re-certified as a MBE.]
(2) The Transportation Cabinet shall use the eligibility standards set forth in 49 C.F.R. 23-63; 49 C.F.R. 23-62; and 49 C.F.R. Part 23—Subpart D, Appendix A, Appendix B, and Appendix C, to determine the eligibility of a firm to be certified or re-certified as a DBE or VBE.
(3) To be certified a firm shall:
(a) Be operated with the intention of making a profit; and
(b) Submit evidence of the firm’s operational status prior to the date of the application which includes the following:
1. A copy of a bid or quotation on a publicly or privately funded project;
2. A copy of an invoice, purchase order, or bill of lading;
3. Proof of gross receipts or receivables due; or
4. A copy of the current certificate of existence or authorization issued by the Kentucky Secretary of State pursuant to K.R.S. 271B.1-280.]

Section 5. DBE Certification Committee. (1) There is a DBE Certification Committee established in the Transportation Cabinet that shall determine the eligibility of each applicant firm to be certified and renewed as a DBE, and in cases in which issues regarding eligibility have arisen, the DBE Certification Committee shall determine whether a firm is eligible to remain certified as a DBE.
(2) The DBE Certification Committee shall be comprised of the following members:
(a) Executive Director, Office of Minority Affairs or an [his] designee, as chair and as a [1] voting member;
(b) State Highway Engineer or his designee;
(c) Deputy Secretary of the Transportation Cabinet or an [his] designee;
(d) [Director, Division of Construction or an [his] designee;]
(e) [Director, Division of Highway Design or an [his] designee;]
(f) [Audit Manager, Internal Audit Branch or an [his] designee;]
(g) [Director, Division of Contract Procurement, or an [his] designee;]
(h) [Executive Director, Office of General Counsel or an [his] designee, nonvoting member; and]
(i) [Kentucky Administrator of the Federal Highway Administration or an [his] designee, ex officio, nonvoting member.]

(3) [6] The Chairman of the DBE Certification Committee shall schedule meetings as needed.
(4) [6] Four (4) of the voting members of the DBE Certification Committee shall constitute a quorum.
(5) [F][a] A simple majority of the voting members present at a meeting with a quorum shall be required to approve or deny an application or decertification submitted to the committee.
(b) A summary record of each meeting shall be maintained by the Office of Minority Affairs and presented for review and approval at the next meeting of the committee which has a quorum present.
(6) [6] At least seven (7) working days prior to the meeting of the committee when an application is to be considered, the Office of Minority Affairs shall provide an agenda and a complete copy of the application and staff summary and recommendations to each member of the committee.
(7) [6] The DBE Liaison Officer shall be present at each committee meeting to answer questions and provide technical information.
(8) [6] When requested by a committee member, the Executive Director of the Office of Minority Affairs shall have the technical staff member available to answer questions regarding an application or decertification.
(9) [4][1] Consistent with the decision of the DBE Certification Committee, the Transportation Cabinet shall issue a written determination of eligibility for certification within ninety (90) days of receipt of a completed original application provided that a challenge as set forth in Section 10 of this administrative regulation has not been received.
(12) The Transportation Cabinet’s Certification Committee may determine, on a case-by-case basis, that an individual who is not a member of one (1) of the groups listed in Section 1[4][4] of this administrative regulation is socially and economically disadvantaged.

Section 6. Certification of Applicant Firm. (1) If an application for certification as a DBE or VBE is approved by the Transportation Cabinet and an eligibility complaint questioning [a challenge to] the status of a firm from a third party as set forth in Section 10 of this administrative regulation is not received during the time the Transportation Cabinet is evaluating the application, the written notification required by Section 5[9] [4][1] of this administrative regulation shall be the notice to the applicant firm of certification as a DBE or VBE.
(2) Certification as a DBE or VBE shall be valid for three (3) years [one (1) year] from the date of notice of certification.
(3) Records of a certification firm shall be retained by the Office of Minority Affairs for a period of not less than three (3) [five (5)] years from the date of notice of certification.
(4) A certified DBE must immediately notify the Office of Minority Affairs of any change of condition that may impact its certification status. [a] Except as set forth in paragraph (c) of this subsection, certification of a firm or business enterprise shall expire immediately upon any change in ownership or control of the firm or business enterprise.
(b) The firm or business enterprise may submit a new application to the Office of Minority Affairs to be considered for certification under the new ownership or control.
(c) If, within seven (7) days of the change in ownership or control, the firm notifies the Office of Minority Affairs of the change, the office may extend the expired certification for a brief period of time and with reasonable conditions placed on the firm.

Section 7. Continuation. [Recertification—(1)] At least thirty (30) days prior to its certification continuation date [expiration], a certified DBE or VBE that intends to continue its certification shall submit an application for continuation to the Transportation Cabinet, Office of Minority Affairs.
(a) Every year the application shall be in the same form and require the same information as in Section 3 of this administrative regulation.
(b) In the alternate year, if there have been no changes since the last application was filed and the application form and attachments would be identical to the last one filed, the applicant may submit a statement of “no change” to the Transportation Cabinet.
on form TC 10-16, Recertification Affidavit.
(a) Beginning with the application for recertification for the third year of certification, certified firms prequalified to engage in highway construction, design, or right-of-way activities, shall also submit evidence of participation in at least one (1) management development course as set forth in Section 16 of this administrative regulation.
(b) Until notified otherwise by the Transportation Cabinet, a certification for which a recertification application has been timely filed shall continue in force as though the recertification had been approved.
(3) A firm that is notified that its request for recertification is denied and the reasons therefore, the firm may request a predetermination meeting within ten (10) days of the date of the notice. The firm may request a predetermination meeting within the ten (10) days; hence, its request for recertification shall be denied effective thirty (30) days from the date of notification.
(4) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 11 of this administrative regulation.
(5) If the Transportation Cabinet’s decision after the predetermination meeting is that the request for recertification shall be denied, the denial shall be effective on the latter of the following dates:
(a) Immediately upon the issuance of written notice by the Transportation Cabinet to the firm;
(b) Thirty (30) days from the date of notification set forth in subsection (5) of this section.
(6) The firm may appeal that decision in accordance with Section 12 of this administrative regulation.
Section 8. Denial of Certification. (1) If an application for certification as a DBE, MBE, or WBE is denied by the Transportation Cabinet, the notification required by Section 5(9) [41] of this administrative regulation shall set forth the reason for denial.
(2) A denial may be appealed to the Transportation Cabinet within thirty (30) days of the notice. The appeal shall be filed in accordance with Section 11 [42] of this administrative regulation.
(3) An applicant firm shall not reapply for certification for one (1) year from the effective date of denial.
(4) The effective date of denial shall be one (1) of the following dates:
(a) If the denial is not appealed, the date the notice is received or delivery is attempted;
(b) If the denial is appealed and the denial is upheld, the date of the notice of final action on behalf of the Transportation Cabinet;
(c) If the denial is appealed and the appellant withdraws, cancels, or otherwise suspends the appeal, the date of the withdrawal, cancellation, or suspension of the appeal.
Section 9. Decertification. (1) The Transportation Cabinet shall decertify a noncompliant DBE pursuant to the provisions of 49 C.F.R. Part 26 and Part 26.87:
(2) A firm may appeal a decision to decertify in accordance with Section 11 of this administrative regulation.
(3) Decertification shall be for a specific period of time as determined by the Transportation Cabinet but shall not be for a period of less than one (1) year.
(4) The Transportation Cabinet may perform periodic reviews or on-site inspections of a certified DBE, MBE, or WBE during its certification period to verify continued eligibility of the firm.
(5) If the Transportation Cabinet finds noncompliance with the eligibility criteria of the certified firm, it shall provide reasonable information requested by the Transportation Cabinet as a part of the periodic review, the cabinet may initiate a decertification proceeding.
(6) The Transportation Cabinet shall notify the certified firm of the pending decertification.
(b) The notice shall specify the reasons for the pending decertification.
(3) A hearing may be requested at any time before the decertification becomes effective.
(b) If the firm fails to request a predetermination meeting within the ten (10) days, it shall be decertified.
(4) The predetermination meeting, if requested, shall be held in accordance with the procedures specified in Section 11 of this administrative regulation.
(5) If the Transportation Cabinet’s decision after the predetermination meeting is that the firm shall be decertified, the firm may appeal that decision in accordance with Section 12 of this administrative regulation.
(6) The effective date of the decertification shall be thirty (30) days after the date the notice of decertification is mailed to the firm; providing the firm does not appeal the decertification to the Transportation Cabinet.
(b) If a firm appeals the decertification, the effective date of the decertification shall be the date of the final ruling of the Secretary of the Transportation Cabinet as set forth in Section 12 of this administrative regulation.
(7) Decertification shall be for a specific period of time but not less than one (1) year.
Section 10. Ineligibility Complaints [Challenge of DBE Certification.] (1) A third party may file a written complaint alleging that a firm is ineligible to participate in the DBE program and specifying the alleged reasons why the firm is ineligible. However, the challenge shall be filed within thirty (30) days from the date of the notice provided by the Small Business Administration issued pursuant to 15 U.S.C. 637, it is rebuttable presumptively to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Transportation Cabinet, Office of Minority Affairs as a DBE.
(b) The Ineligibility complaint [challenge] shall be made in writing to the Office of Minority Affairs.
(2) The challenging third party shall include all information available to it which is relevant to a determination of whether the firm at issue [challenged party] is fact socially and economically disadvantaged and a qualified DBE.
(3) The Transportation Cabinet shall determine, on the basis of the information provided by the Ineligibility complaint and its subsequent investigation [challenged party], if there is reason to believe that the firm at issue [challenged party] is in fact not socially and economically disadvantaged and a qualified DBE.
(4) If the Transportation Cabinet determines that there is not reason to believe that the firm at issue [challenged party] is not socially and economically disadvantaged and not qualified DBE, the cabinet shall so inform the complaining party [challenging party] in writing. The Transportation Cabinet shall take the necessary action to terminate the proceeding.
(5) If the Transportation Cabinet determines that there is sufficient reason to believe that the firm at issue [challenged party] is still socially and economically disadvantaged and not qualified DBE, the office shall notify the firm at issue [challenged party] that its status as a socially and economically disadvantaged individual has been challenged. The notice shall:
1. Identify the complaining [challenging] party;
2. Summarize the findings of the Ineligibility complaint and the subsequent investigation [challenge]; and
3. Require the firm at issue [challenged party] to provide to the Office of Minority Affairs, within thirty (30) days [a specified reasonable time], information sufficient to evaluate its status as a socially and economically disadvantaged individual and qualified DBE.
(6) Failure to provide the requested information within the time limit shall cause the DBE to be decertified or to be denied certification.
(5) If the social and economic disadvantaged status of a new applicant is challenged, the Ineligibility complaint shall be reviewed and investigated [challenge proceedings shall be completed] prior to completion of the certification.
(7) The Transportation Cabinet shall evaluate the information.
available and make a [proposed] determination of the social and economic disadvantage of the challenged party. The office shall notify both parties of this [proposed] determination, setting forth the reasons for its proposal.

(8) Either party may request a predetermination meeting within ten (10) days of the date of the notice. If neither party requests a predetermination meeting within the ten (10) days, the proposed determination of the Transportation Cabinet shall become the final determination, i.e., the challenged party shall either be decertified or continue to be certified.

(9) The predetermination meeting, if requested, shall be held in accordance with Section 11 of this administrative regulation. However, both parties shall be allowed to attend the meeting or respond in writing to the proposed determination.

(10) In making the determinations called for in subsections (3) and (7) of this section [and Section 11 of this administrative regulation as it relates to challenges], the Transportation Cabinet shall use the standards set forth in 49 C.F.R. Parts 26 and 26.87 [Part 23, Subpart D, Appendix C].

(11) [14] During the pendency of an eligibility complaint filed [challenge] under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

(12) [15] The decision of the Transportation Cabinet [in subsection (4) of this section or] after an appeal and hearing before the Secretary of the Transportation Cabinet as set forth in Section 11 [12] of this administrative regulation may be appealed to the United States Department of Transportation, by the adversely affected party to the proceeding under the procedures of 49 C.F.R. Part 23.55.

Section 11. Predetermination Meeting. (1) A predetermination meeting with the Transportation Cabinet may be requested by any party as set forth in Sections 7, 9, and 10 of this administrative regulation. The request shall be made in writing, signed and dated.

(2) The Transportation Cabinet, Office of Minority Affairs shall schedule the date for the predetermination meeting to be between five (5) and ten (10) days after receipt of the request for the predetermination meeting. Upon agreement between the Office of Minority Affairs and all affected parties, the meeting may be scheduled later than the ten (10) days.

(3) The Transportation Cabinet shall notify all affected parties in writing of the date, time and location of the predetermination meeting.

(4) The predetermination meeting shall be an informal proceeding. The predetermination meeting may be conducted by the Transportation Cabinet or by the affected parties in writing, signed and dated.

(5) The Transportation Cabinet shall render a written decision within seven (7) days of completion of the predetermination meeting. In making this decision, the Transportation Cabinet shall use the standards set forth in Section 4 of this administrative regulation. The affected parties shall be notified of the decision of the Transportation Cabinet.

Section 12. Appeal and Hearing. (1) Any party in Section 7, 8 or 9[21] (9), (94), or (10)(4) of this administrative regulation adversely affected by a decision of the Transportation Cabinet may appeal that decision within thirty (30) days of the notice of determination. The appeal shall be filed in writing with the Transportation Cabinet, Office of Minority Affairs, Executive Director, Station: W6-05-01, 200 Merc Street, Frankfort, Kentucky 40622. Alternatively, an appeal may be made directly to United States Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 2401, Washington, DC 20590.

(2) The Transportation Cabinet shall schedule the date for the hearing on the appeal not less than fifteen (15) nor more than thirty (30) days after the appeal is received unless otherwise agreed upon by the parties. (to be between fifteen (15) and thirty (30) days after the appeal is received unless otherwise agreed to by all parties.)

(b) If an appeal hearing is rescheduled beyond the thirty (30) days from the date of the notification to deny certification at the request of the applicant firm and the firm is not currently certified, the firm's annual certification has expired, or the firm's request for decertification has been denied, the Office of Minority Affairs shall not approve as part of an established DBE goal any of the work contracted by the applicant firm.

(3) The Transportation Cabinet shall conduct the administrative hearing pursuant to the provisions of KRS 138.040 (qualifications of hearing officer), 138.050 (notice of administrative hearing), 138.070 (prehearing conference), 138.080 (conduct of hearing), 138.090 (findings of fact, evidence, recording of hearing and burden of proof), 138.100 (prohibited communications), 138.110 (recommended order), 138.120 (final order), and 138.130 (official record of hearing) [Chapter 138].

(4) The hearing officer's findings of fact shall be based on conditions existing at the time the on-site inspection or owner interview was conducted by the Transportation Cabinet. Changes made in an applicant's firm since the on-site inspection or owner interview shall not be considered by the Transportation Cabinet or a hearing examiner in determining the eligibility of the firm.

(5) An appeal from the Transportation Cabinet's final decision may be made to the United States Department of Transportation in accordance with the provisions of 49 C.F.R. Parts 26 and 26.89, 23.55 and 49 C.F.R. 23 Subpart D, Appendix A, Decertification Procedures.

Section 13. Joint Ventures. (1) Any joint venture which includes a certified DBE, MBE, or WBE may apply to be certified as a joint venture eligible to participate in the DBE, MBE, or WBE program. Application for certification shall be on Transportation Cabinet Form TC 10.5. DBE/MBE/WBE Joint Venture Eligibility Application, Schedule B. The application procedure, eligibility standards, and certification-procedure followed shall be as set forth in this administrative regulation.

(2) Application from a joint venture which includes a disadvantaged, minority or women business enterprise which has not been certified shall not be considered by the Transportation Cabinet as a joint venture eligible to participate in the DBE, MBE, or WBE program.

(3) If all firms involved in the joint venture are certified DBEs, MBES, or WBES, there shall not be a need for the joint venture to request certification as a joint venture eligible to participate in the DBE, MBE, or WBE program.

Section 14. Additional Program Guidelines. (1) C.F.R. 121 as effective on October 1, 1977, as amended at 43 Fed. Reg. 4582; January 29, 1990 is adopted without change. The federal regulation sets standards for the size of small businesses as established by the Small Business Administration. These size standards, when less than $16.6 million, are required by 49 C.F.R. Part 23 Subpart D, Appendix A to be used to determine when a firm has graduated from certification program, i.e., it is no longer considered to be a small business.

Section 15. Management Development Course. (1) Each owner of a Kentucky-based certified firm which is also prequalified by the Transportation Cabinet under the provisions of KRS 45A.825, 600 KAR Chapter 5, or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend at least one (1) management development course prior to being recertified for its third year as a DBE.

(2) DBE certified firms not based in Kentucky may be required by the Office of Minority Affairs to attend at least one (1) management development course.

(3) DBE certified firms which have previously attended a management development course and which have been noted for a violation of this administrative regulation or 600 KAR 4:020 are required to attend an additional management development course.

(4) The management development course shall be offered free of charge by the Entrepreneurial Development Institute.

(5) All owners of firms required to attend a management development course shall attend the course.

(6) The owners of certified firms which are not required to attend the management development course may apply to attend.
The Transportation Cabinet shall accommodate them on a space-available basis.

Section 16. Disadvantaged Business Enterprise (DBE) Program. (1) The Transportation Cabinet shall offer a one (1) day orientation program for any certified DBE firm. The orientation program shall acquaint owners of DBE firms with the following:

(a) The organization, structure and expectations of the Transportation Cabinet;
(b) The requirements of the DBE program and with the provisions of the "Standard Specifications for Road and Bridge Construction," and "Standard Drawings"; and
(c) The supportive services and technical assistance available to the DBE.

(2) Each owner of a certified DBE firm which is also prequalified under KRS 48A.826, 600 KAR Chapter 6, or 603 KAR 2:015 to engage in highway construction, design or right-of-way activities shall attend an orientation program prior to competing for a U.S. Department of Transportation-assisted project.

(3) If the certified DBE firm is based out of Kentucky, the orientation program may be conducted by telephone and mail.

(4) The owners of certified firms which are not required to attend the orientation program may apply to attend. The Transportation Cabinet shall accommodate them on a space-available basis.

Section 12. [147] Material Incorporated by Reference. (1) The following material is incorporated by reference unless designated as being adopted without change:

(a) 49 C.F.R. 25, effective October 1, 2003 (23, effective October 1, 1997), is adopted without change;
(c) Kentucky Transportation Cabinet DBE Program Plan as approved by the Federal Highway Administration, [Form TC-10-3, "Application for Certification Schedule A," January-1992 edition];

(e) Form TC-10-5, "DBE/AWB Joint Venture Application, Schedule B," February-1992 edition;
(f) 13 C.F.R. 121, effective October 1, 1997, adopted without change;

(2) Copies of all of the material incorporated by reference may be inspected, copied, or obtained, subject to applicable copyright law, [obtained, viewed, or copied] at the Transportation Cabinet, Office of Minority Affairs, Station W6-06-01, 200 Mero Street, [604 High Street], Frankfort, Kentucky 40622. The business hours of the Office of Minority Affairs are 8 a.m. to 4 p.m., Monday through Friday, except state holidays. The telephone number is (502) 564-3601.

ARTHUR MCKEE, JR., Executive Director
MAXWELL C. BAILEY, Secretary
APPROVED BY AGENCY: March 11, 2004
FILED WITH LRC: March 12, 2004 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2004 at 10 a.m. at the Transportation Cabinet Office Building, 6th Floor Conference Room 612, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by April 15, 2004. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 3, 2004. 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: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, Station: W6-20-01, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7690, fax (502) 564-6238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana C. Fugazzi

(1) Provide a brief summary of:

(a) What this regulation does: This regulation sets forth the requirements of the Kentucky Transportation Cabinet’s Disadvantaged Business Enterprise ("DBE") Program. The DBE Program is a federally-mandated affirmative action program that requires recipients of funding from the United States Department of Transportation ("USDOT") to develop a program to ensure non-discrimination in the award and administration of USDOT-assisted contracts.

(b) The necessity of this administrative regulation: Pursuant to 49 C.F.R. 26.3, the cabinet, as a recipient of USDOT funds, must develop and implement a DBE Program in order to receive those funds. Failure to maintain a compliant DBE Program may result in the loss of a portion or all of federal transportation funding.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation adopts the requirements of 49 C.F.R. Part 26 as issued in 64 Fed. Reg. 5662, February 12, 1999 and amended by 68 Fed. Reg. 35542, June 16, 2003. In addition, it details the Transportation’s program to comply with the federal DBE Program requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the states: This regulation establishes the certification process for DBEs and the appeal process for denials and removals of certification eligibility. The regulation also establishes the DBE Certification Committee and adopts the DBE Program Plan as approved by the Federal Highway Administration ("FHWA"). The DBE Program Plan is required by FHWA to detail the implementation of the DBE 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: This amendment updates the state regulation by adopting the current federal regulations. The current regulation was made obsolete with the promulgation of the current regulation in 1999.

(b) The necessity of the amendment to this administrative regulation: The federal regulations pertaining to the DBE Program were first issued in the 1980s and were amended in 1999 to reflect a series of United States Supreme Court decisions. This regulation is needed to bring the cabinet’s DBE Program into compliance with the federal DBE Program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment adopts the requirements of 49 C.F.R. Part 26 in total.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will allow the cabinet to apply and enforce the current federal regulations. Conflicts between the current state and federal regulations routinely result in confusion on the part of those citizens of the commonwealth who are required to follow them in order to comply with the requirements of the DBE Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The federal regulations require that all projects involving USDOT funding be considered when administering the DBE Program. Therefore, any USDOT-assisted project may contain a DBE goal, and any person seeking to work on a USDOT-assisted project is subject to the requirements of the regulation. Although the Transportation Cabinet is by far the recipient of more federal transportation funds than any other entity, Kentucky recipients of USDOT funds include the Transit Authority of River City.
(TARC), the Transit Authority of Northern Kentucky (TANK), Lexington's Bluegrass Airport, the Lexington Transit Authority ("LexTran"), the Louisville International Airport, the Paducah Airport Corporation, the Kenton County Airport Board ("Northern Kentucky/Cincinnati Airport"), regional and local airports, and local governments receiving Transportation Enhancement ("TE") Funds. TF Funds, which are generally administered through the Transportation Cabinet pursuant to the Transportation Enhancement Act for the 21st Century ("TEA-21") and its successors, can be distributed to city and county governments and other recipients to enhance transportation projects. (For example: sidewalk improvements for the City of Piarville improvements to US 150 in Boyle County). Also impacted by the DBE Program are any consulting engineers, prime contractors or sub-contractors working on federally-funded highway projects will be impacted, as will the more than 328 DBE firms who are currently certified by the Transportation Cabinet. Approximately 40 of these firms have participated in federally funded contracts issued by the Transportation Cabinet. The Transportation Cabinet has approximately prequalified construction firms and approximately 290 prequalified engineering, environmental, geotechnical and design consulting firms.

(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: Because the cabinet's DBE program is required to comply with the current federal law, nearly all of the requirements of the 1999 regulations have been implemented. The effective date of the current federal regulation was March 2, 1999; therefore little noticeable impact should occur as a result of the promulgation of this regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost over current funding.
(b) On a continuing basis: In order to achieve the level of compliance with the monitoring and enforcement requirements of the federal regulations, the cabinet may be required to seek additional funding to maintain a full staff of personnel to monitor the activities of DBE subcontractors and prime contractors in the field.

(6) What is the source of the funding to be used for the implementation and enforcement of this administration regulation: Federal highway funds and state road 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: The federal regulations issued in 1999 required additional monitoring to assure compliance with the letter and intent of the law. The increased emphasis on the DBE program has drawn attention to the need for a commitment of additional resources to field monitoring of DBE performance. In addition, the Dye Report made several recommendations pertaining to the DBE program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this administrative regulation did not establish any fees nor did it directly or indirectly increase any fees.

(9) TIERING: Is Tiering applied? Tiering is inapplicable to this regulation and the DBE program.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Minimum or uniform standards contained in the federal mandate. The applicable federal regulations contain the following minimum standards: (a) 40 C.F.R. Part 26 requires recipients ("the cabinet") of funds from the United States Department of Transportation ("USDOT") to implement and maintain a Disadvantaged Business Enterprises ("DBE") Program designed to: ensure non-discrimination in the award and administration of USDOT-assisted contracts in the highway, transit and airport financial assistance programs; create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts; ensure that the USDOT's DBE program is narrowly tailored in accordance with applicable law; ensure that only firms that fully meet DBE eligibility standards are certified; help remove barriers to the participation of DBEs in USDOT assisted contracts; and assist in the development of DBE firms;
(b) The cabinet must issue and publish a DBE program policy statement.
(c) The cabinet must appoint a DBE liaison officer;
(d) The cabinet must develop an DBE program plan for approval by the Federal Highway Administration ("FHWA");
(e) The cabinet must identify and make reasonable efforts to use DBE-owned financial institutions;
(f) The cabinet must establish prompt payment provisions for DBEs;
(g) The cabinet must maintain and make available to interested persons a directory of certified DBEs;
(h) The cabinet must address over-concentrations of DBEs in certain types of work that unduly burden the opportunity of non-DBE firms to participate in this type of work;
(i) The cabinet must establish a DBE business development program;
(j) The cabinet must implement appropriate mechanisms to ensure compliance with the DBE program requirements including mechanisms to assure that DBEs who receive contracts are actually performing the work committed to them at the contract award. The mechanism must provide a running tally of actually DBE commitments, awards and performance;
(k) The cabinet must set an overall DBE program goal that may be met through race-neutral means, and must set project goals to meet any portion of the overall goal that cannot be met using race-neutral means;
(l) The cabinet must establish and follow procedures to determine whether bidders have met the good faith efforts requirements of the regulation;
(m) The cabinet must implement a process to certify eligible DBE firms in accordance with the standards enumerated in the regulation;
(n) The cabinet must implement a Unified Certification Program to assure "one stop shopping" for the certification of eligible DBEs in accordance with USDOT program regulations; and
(o) The cabinet must develop and implement an appeals process applicable for DBE certification decisions that insures due process.

2. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, the Kentucky Transportation Cabinet’s DBE program is an adoption of the federal program. There are no stricter, additional or different responsibilities or requirements than those required by the federal mandate.

3. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.
FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(New Administrative Regulation)


RELATES TO: KRS 45A.030, 45A.180
STATUTORY AUTHORITY: KRS 45A.180
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.180 requires the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of as many recognized alternative methods of management of construction contracting as he may determine to be feasible. This new administrative regulation implements the provisions of KRS 45A.180 relating to alternative construction delivery methods.

Section 1. Definitions. (1) "Chief purchasing officer" is defined in KRS 45A.030(5).
(2) "Construction manager-agency" is defined in KRS 45A.030(5).
(3) "Construction management-at-risk" is defined in KRS 45A.030(6).
(4) "Design-bid-build" is defined in KRS 45A.030(11).
(5) "Design-build" is defined in KRS 45A.030(12).

Section 2. An alternative construction delivery method may be deemed appropriate for competitive negotiation pursuant to KRS 45A.085 upon issuance of a written determination by the chief purchasing officer that due to the nature, detail or circumstances of a project, it is not appropriate to solicit competitive bids using the conventional design-bid-build delivery method and an alternative construction delivery method is justified. The determination shall include a description of facts justifying use of an alternative construction delivery method, and shall state whether the method to be used shall be one of "construction management-at-risk", "design-bid-build", or "construction manager-agency".

Section 3. (1) If it has been determined that it is not appropriate to solicit competitive bids using the conventional design-bid-build delivery method, action to deliver a capital construction project using a specific alternative construction delivery method shall commence by solicitation of written proposals in accordance with KRS 45A.085(2) and 200 KAR 5:307. The criteria for determining the utilization of a specific alternative delivery method for a particular project shall include, but shall not be limited to, such factors as the dollar scope of the project, the anticipated schedule of the project, and the overall complexity of the project. The Finance and Administration Cabinet, in conjunction with the user agency, shall determine the appropriate project delivery method prior to the development of preliminary specifications and the issuance of any project solicitations.
(2) A solicitation of proposals for competitive negotiation shall state:
(a) That the purchasing agency proposes to enter into competitive negotiation with responsible offerors;
(b) The date, hour, and place that written proposals shall be received;
(c) The type of alternative delivery method involved and the associated requirements;
(d) A description of the services sought and the procurement procedures to be followed;
(e) Specifications, or the location where specifications may be obtained;
(f) The specific qualitative and pricing evaluative factors, with associated scoring values or weights, to be considered in determining the proposal most advantageous to the Commonwealth, with qualifications and price to be weighted at not less than twenty-five (25) points and fifty (50) points respectively;
(g) The level or quantity of information required from each offeror to allow for equitable evaluation;
(h) The proposed method of award of contract;
(i) Other information as, in the opinion of the purchasing officer, may be desirable or necessary to reasonably inform potential offerors of technical, performance, and any other data and requirements of the procurement;
(j) The existence of a funding limitation, if determined to be in the best interest of the Commonwealth;
(k) The amount of the funding limit, if it is determined by the Director of the Division of Contracting and Administration that disclosure of the amount of the funding limit will promote competition and will be in the best interest of the Commonwealth; and
(l) The level or amount of stipends, if any, to be provided and to whom, contingent upon funding limitations, and not to exceed one (1) percent of the total construction estimate. Stipends shall only be provided if adequate funds are available over and above the required project costs.
(3) If a funding limit has been established, proposals that exceed the funding limit may be rejected.

Section 4. (1) Procedures for the manner in which proposals will be evaluated shall be established by the purchasing officer for each procurement and shall be set forth in the request for proposals. The purchasing officer may request offerors to submit written clarification or explanation of their proposals, and the proposal of any offeror who fails to respond or to request an extension of time to respond within the time requested may be rejected.
(2) Proposals shall be evaluated based upon factors stated in the request for proposals. Numerical or other appropriate rating systems may be used. All evaluation documentation, scoring, and summary conclusions shall be in writing and made a part of the file records for the procurement.

Section 5. The Director of the Division of Contracting and Administration shall appoint an evaluation committee of scoring and nonscoring (technical) members with membership comprised of appropriate personnel from the Finance and Administration Cabinet and the user agency for which the project is being constructed. The Director of the Division of Contracting and Administration shall determine, in writing, the number of committee members based upon the financial scope and technical complexity of the subject project, with no less than four (4), nor more than seven (7) scoring members.

Section 6. Interim preproposal meetings shall be conducted with potential offerors to allow for questions and clarifications regarding project plans and specifications provided as a part of the request for proposals. A written confirmation of all information presented in these meetings shall become an official addendum to the procurement documents and provided to all potential offerors. The number of preproposal meetings shall be determined by the Director of the Division of Contracting and Administration and stated in the request for proposals.

Section 7. All written proposals received by the procurement agency in response to a solicitation shall be kept secure and unopened by the purchasing officer until the date and hour established for opening the proposals. Proposals not clearly marked as such may be opened for identification purposes, and shall be appropriately identified with reference to the particular procurement and resaled until the time for opening proposals.

Section 8. At the close of the proposal submission deadline, all proposals received shall be opened by the purchasing officer. The purchasing officer shall examine each written proposal received for general conformity with the terms of the procurement. If, after examination of the written proposals initially submitted, it is determined, in writing, that no acceptable proposal has been submitted, all proposals may be rejected and new proposals may be solicited as provided in this administrative regulation on the basis of the same, or revised terms, or the procurement may be abandoned.
Section 9. If, after solicitation of proposals to enter into competitive negotiations, only one (1) proposal responsive to the solicitation is received, the purchasing officer may commence negotiations with the single offeror and any resulting contract entered into with that offeror shall be deemed to have been competitively negotiated and awarded in accordance with KRS 45A.085 and this administrative regulation. The terms and conditions of the contract shall not in any material respect deviate in a manner detrimental to the purchasing agency from the terms and conditions specified in the solicitation for proposals.

Section 10. The purchasing officer shall hold separate any pricing information before forwarding all conforming proposals to the appropriate, designated evaluation committee for qualitative evaluation. Pricing information shall be kept separate and secure until it is combined with the evaluation committee aggregate qualitative scoring to achieve the final score for the procurement process as set forth in the request for proposals.

Section 11. Proposals shall not be subject to public inspection until the procurement process has been completed and a contract awarded to the highest scoring, responsible offeror submitting the proposal determined to be the most advantageous to the Commonwealth, based upon the pricing and qualitative evaluation factors set forth in the solicitation.

Section 12. Discussions with offerors by any scoring member of the evaluation committee shall be conducted in accordance with predetermined rules established by the purchasing officer. Any extraneous communications between offerors and scoring members shall be documented by each member with a written summary of all discussions setting forth both the dates and the general substance of the discussions. Verbatim records of the discussion shall not be required. The written summaries shall become part of the procurement file.

ROBERT B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 13, 2004
FILED WITH LRC: February 17, at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on April 22, 2004, at 11 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by April 15, 2004, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 3, 2004.

Send written notification of intent to heard at the public hearing or written comments on the proposed administrative regulation to: Angela Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374, Capitol Annex Building, Frankfort, Kentucky 40601, phone (502) 564-6690, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This new administrative regulation promulgates procurement standards and procedures for alternative capital construction delivery methods to be utilized by the Commonwealth.
   (b) The necessity of this administrative regulation: The Secretary of the Finance and Administration Cabinet is directed by KRS 45A.180 to promulgate appropriate regulations addressing the procurement of alternative capital construction delivery methods to be utilized by the Commonwealth.
   (c) How this administrative regulation conforms to the content of the authorizing statute: In accordance with the specific requirements of KRS 45A.180, this administrative regulation promulgates standards for how the procurement of alternative construction delivery methods will be conducted for the delivery of capital construction projects.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This new administrative regulation clarifies the standards for how the Finance and Administration Cabinet shall procure alternative construction delivery methods, as envisioned by KRS 45A.180.

   (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 statute: N/A
      (d) How the amendment will assist in the effective administration of the statute: N/A

   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all state agencies that administer capital construction programs and vendors seeking state contracts other than under the traditional design/build delivery mode.

   (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 new regulation will impact the procurement and administration of design and construction contracts utilizing alternative construction delivery methods and will force the offering, under statutory and regulatory standards, of appropriate alternative methods based upon specific project needs.

   (5) Provide an estimate of how much it will cost to implement this administrative regulation:
      (a) Initially: $0
      (b) On a continuing basis: $0
      (c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

   (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 increases in fees or funding will be necessary.

   (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

   (9) TIERING: Is tiering applied? The administrative regulation directly provides for tiering through minimum, but not uniform, standards for all alternative construction delivery projects and indirectly through the tailoring of specific construction projects to specific alternative delivery methods and the resulting expertise of various affected prospective vendors.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(New Administrative Regulation)

200 KAR 5:370. Multistep competitive sealed bidding.

RELATES TO: KRS 45A.080

STATUTORY AUTHORITY: KRS 45A.035

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). This administrative regulation implements a multistep bidding process under the provisions of KRS 45A.080.

Section 1. Definitions. "Acceptable" means the unpriced technical offer is compliant with technical specifications described in the solicitation.

(2) "Multistep sealed bidding" means a two (2) phase process
consisting of a technical first phase composed of one (1) or more steps in which bidders may submit unpriced technical offers to be evaluated by the purchasing agency, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.

(3) "Potentially acceptable" means the unpriced technical offer is materially compliant with the technical specifications described in the solicitation, thereby providing a reasonable expectation of being made acceptable by amendment to the offer. If the bidder does not amend the offer by the specified date, the offer shall be deemed unacceptable.

(4) "Prebid conference" means a meeting or discussion with the purchasing officer and interested bidders.

(5) "Reverse auction" means a real-time, structured bidding process, usually lasting less than one (1) hour and taking place during a previously-scheduled time and Internet location, during which multiple suppliers, anonymous to each other, submit revised, lower bids to provide the solicited good or service.

(6) "Unacceptable" means the unpriced technical offer is not materially compliant with the technical specifications described in the solicitation to such an extent that there is no reasonable assurance that, by amendment, the offer will meet or exceed the specifications and other requirements.

Section 2. General Terms. (1) Except for the variations described in this administrative regulation, the provisions of 200 KAR 5:300 shall apply to multistep bidding.

(2) Reverse auction may be used as a form of competitive bidding in a multistep bidding process, and as an alternative to sealed bidding if it is determined by the purchasing officer that it is in the best interest of the Commonwealth.

(3) A contract resulting from multistep bidding shall not be awarded for an amount greater than the price in an existing contract with the Commonwealth for a substantially similar good or service that was solicited through competitive sealed bids.

Section 3. Multistep Sealed Bidding. (1) The multistep sealed bidding method may be used if the procurement officer determines in writing that:

(a) Definite criteria exist for evaluation of technical proposals and more than one (1) technically-qualified source is expected to be available; or

(b) A reverse auction is in the best interest of the Commonwealth; and

(c) It will be advantageous to the purchasing agency:

1. To invite and evaluate technical offers to determine their acceptability to fulfill the purchase description requirements;

2. To conduct discussions for the purposes of facilitating understanding of the technical offer and, if appropriate, obtaining supplemental information, permitting amendments of technical offers, or amending the purchase description;

3. To accomplish paragraphs (a) and (b) of this subsection prior to soliciting priced bids; and

4. To award the contract to the responsive and responsible bidder providing the best value to the Commonwealth.

(2) Prebid conferences in multistep sealed bidding. Prior to the submission of unpriced technical offers, the procurement officer may conduct a prebid conference. If a reverse auction shall be part of Phase Two, the process shall be explained during the prebid conference. The issuing agency may respond to questions and concerns during the conference, but the official response from the issuing agency shall be in writing and shall be provided to all potential bidders who attended the prebid conference.

Section 4. Procedure for Phase One (1) of Multistep Sealed Bidding. (1) Multistep sealed bidding shall be initiated by the issuance of a solicitation as required by KRS 45A.080 and FAP 111-35-00. The multistep solicitation shall state:

(a) That unpriced technical offers are requested;

(b) Whether price bids are to be submitted at the same time as unpriced technical offers or if a reverse auction shall be conducted. If a price bid is required with the unpriced technical offer, the price bids shall be submitted in a separate sealed envelope.

(c) That it is a multistep sealed bid procurement, and priced bids shall be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(d) The criteria to be used in the evaluation of the unpriced technical offers;

(e) That the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers in accordance with subsection (5) of this section;

(f) That bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data that are to remain confidential;

(g) That the good or service being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable; and

(h) The manner in which the second phase reverse auction shall be conducted, if applicable.

(2) Amendments to the solicitation. After receipt of unpriced technical offers, amendments to the solicitation shall be distributed only to bidders who submitted unpriced technical offers, and those bidders shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the solicitation shall be canceled in accordance with KRS 45A.085 and a new solicitation issued.

(3) Receipt and handling of unpriced technical offers. Unpriced technical offers shall be opened publicly, identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the specified date and time. After the date established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder. Prior to Phase Two of the multistep bidding process, a technical offer shall be shown only to purchasing agency personnel and those involved in the selection process who have a legitimate interest in the offer.

(4) Evaluation of unpriced technical offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the solicitation. A bidder shall submit a technical offer in sufficient detail so as to substantially comply with the technical specifications of the solicitation. The unpriced technical offers shall be categorized as:

(a) Acceptable;

(b) Potentially acceptable; or

(c) Unacceptable.

(5) Discussion of unpriced technical offers. The procurement officer may hold a conference with all bidders at any time during the evaluation of the unpriced technical offers. The purchasing officer may discuss with bidders, including any subcontractor or supplier of goods or services, acceptable and potentially acceptable bids. Discussions may be conducted for the purposes of facilitating understanding of technical offers and specifications and may include, but shall not be limited to:

1. Obtaining supplemental information;

2. Amendments to the technical offer;

3. Amendments to the solicitation; or

4. A potentially acceptable offer being amended to become an acceptable offer.

(b) During the course of these discussions the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder. Once discussions have begun, any bidder who has not been notified that its offer has been finally found unacceptable may submit supplemental information modifying or otherwise amending its technical offer at any time until the closing date established by the procurement officer. The procurement officer shall notify all bidders in writing when no additional supplemental information may be submitted.

(6) Technical evaluation. The evaluation of technical offers shall be in writing. If the solicitation is for computer hardware, software and related services, the purchasing agency shall comply with FAP 111-15-00(2). A written record shall be maintained and become a part of the bid file.

(7) The procurement officer may initiate Phase Two of the multistep bidding if, in the procurement officer's opinion, there are sufficient acceptable unpriced technical offers to assure effective
price competition in the second phase without modification or alteration of the offers. If the procurement officer finds that there are not sufficient acceptable unpriced technical offers to assure effective price competition in the second phase without modification or alteration of the offers, the procurement officer shall issue an amendment to the solicitation or engage in technical discussions as set forth in subsection (5) of this section.

(8) Notice of unacceptable unpriced technical offer. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file. If the procurement officer determines a bidder’s unpriced technical offer to be unacceptable, the officer shall notify the bidder. A bidder whose technical offer is determined to be unacceptable shall not be allowed to amend or supplement the technical offer.

(9) Mistakes during multistep sealed bidding. Mistakes may be corrected or bids may be withdrawn during Phase One:

(a) Before unpriced technical offers are evaluated;
(b) After any discussions have commenced under subsection (5) of this section;
(c) If responding to any amendment of the solicitation; or
(d) In accordance with 200 KAR 5:306 and FAP 111-35-00.

Section 5. Procedure for Phase Two of MultiStep Sealed Bidding. (1) Upon the completion of Phase One of the multistep bidding process, no public notice shall be required for Phase Two. The procurement officer shall either:

(a) Open price bids submitted in Phase One from bidders whose unpriced technical offers were found to be acceptable; if the offers have remained unchanged and the solicitation has not been amended;
(b) Invite each bidder whose technical offer was determined to be acceptable to submit a price bid; or
(c) Conduct a reverse auction.

(2) If in the best interest of the Commonwealth, the reverse auction shall be an open and interactive process where pricing is submitted, made public immediately, and bidders are given opportunity to submit revised, lower bids, until the bidding process is closed.

(3) The solicitation of price bids for a reverse auction shall establish a date and time for the beginning and close of the reverse auction. The closing date and time may be a fixed point in time or may remain dependent on a variable specified in the solicitation.

(a) Following receipt of the first bid after the beginning of the reverse auction, the lowest bid price shall be posted electronically, and updated as other bidders submit bids.
(b) At any time before the closing date and time, a bidder may submit a lower bid.

(5) Mistakes during reverse auctions.

(a) Withdrawal. If a mistake in a bid is attributable to an error in judgment, the bid may not be withdrawn. If a mistake in a bid is inadvertent, withdrawal or correction may be permitted at the discretion of the procurement officer and to the extent it is not contrary to the interest of the purchasing agency or the fair treatment of other bidders. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn due to an inadvertent mistake after the closing date and time, the procurement officer shall determine in writing whether to:

1. Award the contract to the next lowest responsive vendor;
2. Cancel the solicitation; or
3. Reopen Phase Two bidding to all bidders whose technical offers were determined acceptable during Phase One.

(b) If Phase Two bidding is reopened, the procurement office shall notify all other bidders whose technical offers were determined acceptable during Phase One of the new date and time for the beginning and close of Phase Two bidding.

(c) Confirmation of bid. If it appears from a review of the bid that a mistake has been made, the bidder shall be requested to confirm the bid. Situations in which confirmation shall be requested include obvious, apparent errors on the face of the bid or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in paragraph (a) of this subsection are met.

Contact person: Angela C. Robinson, Assistant General Counsel, Finance and Administration Cabinet, Room 374 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Robert B. Rudolph, Jr., Secretary
APPROVED BY AGENCY: February 13, 2004
FILED WITH LRC: February 17, 2004, at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulations shall be held on April 22, 2004 at 10 a.m. in Room 386, Capital Annex, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by April 15, 2004, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 3, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Angola C. Robinson, Assistant General Counsel, Finance and Administration Cabinet, Room 374 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.
agencies when goods or services are procured through this multistep bidding process. When used by other governmental enti-
ties, reverse auctions have resulted in savings of 15 to 20 percent of historic costs. Vendors will be required to bid online at an Inter-
et site if a reverse auction is determined to be in the best interest of the Commonwealth.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(c) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: No funding
necessary.

(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change if it is an amendment: No increase in
fees or funding will be necessary.

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied. The
characteristics of the commodity or service sought by a state
agency will determine if the solicitation will be conducted using a
multistep competitive bidding process.

DIVISION OF OCCUPATIONS AND PROFESSIONS
Board of Licensure for Massage Therapy
(New Administrative Regulation)

201 KAR 42:020. Fees.

RELATES TO: KRS 309.357
STATUTORY AUTHORITY: KRS 309.355(3), 309.357
NECESSITY, FUNCTION, AND CONFORMITY: KRS
309.355(3) requires the board to promulgate administrative regula-
tions to implement KRS 309.350 to 309.364. KRS 309.357 requires
the board to establish reasonable fees for the licensure, renewal
and reinstatement of massage therapists. This administrative regula-
tion establishes the fees relating to massage therapy (MT) licensure.

Section 1. Fee Payments. (1) All fees established in Section 2
of this administrative regulation shall be:
(a) Made payable as required by KRS 309.356 to the State
Treasury; and
(b) Paid by:
   (a) Cashier’s check;
   (b) Certified check;
   (c) Money order; or
   (d) Personal check.

(2) A payment for an application fee that is incorrect shall be
returned to the applicant and the application shall not be posted
until the correct fee is received.

Section 2. Fees. (1) The fee for an initial massage therapist
license shall be $125 paid according to the following schedule:
(a) Fifty (50) dollars of the $125 shall be nonrefundable and
due at the time of application.
(b) The remaining seventy-five (75) dollar balance of the $125
fee shall be due at the time the license is approved.
(2) The biennial renewal fee for a massage therapist license
shall be $100.
(3) Reinstatement fees.
   (a) If a license is renewed within sixty (60) days of the date of
reinstatement, the renewal fee shall be $150.
   (b) If a license is renewed after sixty (60) days of the date of
reinstatement, the renewal fee shall be $200.

This is to certify that the Chair of the Kentucky State Board of
Licensure for Massage Therapy has approved this administrative
regulation prior to its filing by the Kentucky State Board of Licens-
ure for Massage Therapy with the Legislative Research Commis-
sion as required by KRS Chapter 15A, to carry out and enforce
provisions of KRS 309.350 to 309.364.

THERESA M. CRISLER, Chair
APPROVED BY AGENCY: March 8, 2004
FILED WITH LRC: March 15, 2004 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hear-
ing on this administrative regulation shall be held on March 29,
2004 at 1 p.m. at Division of Occupations and Professions, 911
Leawood Drive, Frankfort, Ky. Individuals interested in being
heard at this hearing shall notify this agency in writing March 22, 2004,
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 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 ad-
ministrative regulation. Written comments shall be accepted until
March 22, 2004. Send written notification of intent to be heard
at the public hearing or written comments on the proposed admin-
istrative regulation to the contact person.

CONTACT PERSON: Kristen Webb, Director, Division of Oc-
cupations and Professions, 911 Leawood Drive, Frankfort, Ken-
tucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Kristen M. Webb, Executive Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation
establishes the fees for initial licensure, renewal, and reinstatement
for a massage therapist.
(b) The necessity of this administrative regulation: KRS
309.335(3) requires the Board of Licensure for Massage Therapy
to carry out the provisions of licensure of massage therapists and
KRS 309.357 requires the board to establish fees.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: The regulation conforms to the statutes
by establishing all fees.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This regulation
clearly delineates the amounts of all fees charged by the board
and will reduce inquiries the board receives by placing the public on
notice.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of: N/A
(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 administra-
tion of the statutes:
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: Individuals planning to practice massage ther-
apy; approximately 3,031 individuals currently practicing massage
therapy; approximately 1,000 students currently enrolled in schools
of massage therapy; and educational programs that provide the
required massage therapy training.
(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: Current
and future massage therapists are given a mechanism for paying
fees required under KRS 309.354. The administrative regulation
and state requirements for licensure will be taught to students en-
suring each candidate for licensure understands the required state
law and fees necessary for licensure under KRS 309.357.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation: Initial cost to implement this adminis-
trative regulation is of posting, printing, and mailing it as part of
the total set of new administrative regulations for the practice of
massage therapy. This administrative regulation provides for fees

to be paid to the board and provides revenue. This revenue cannot
be collected without printing costs of the two page application.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of the funding to be used for implementation enforcement is the proposed licensing fees. Proposed initial licensing fee is $125. A 2002 Opinion Research Corporation (ORC) Caravan survey by Decision Diagnostics estimated, 3,031 practicing massage therapists in Kentucky. An estimated 1,000 will apply for licensure in the first year, for a fund of $125,000. The majority is estimated to apply near the end of the grandfathering period, bringing another 2,000+ application fees for a second-year income of $250,000. It is to be noted that the assembly of this proposed administrative regulation presented no cost to the state prior to filing with the Regulations Compiler.

(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: KRS 309.357 mandates fees to license as a massage therapist. This new administrative regulation sets those new fees, and does not require any new funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish fees as required by KRS 309.357.

(8) TIERING: Is tiering applied? Tiering is applied only in cases where individuals pay late fees that are at a rate as specified in KRS 309.357(4), (5).

JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(Repealer)


RELATES TO: KRS 16.050, 16.055, 16.080
STATUTORY AUTHORITY: KRS 15A.140, 15A.160, 16.080
NECESSITY, FUNCTION, AND CONFORMITY: The provisions of this administrative regulation have been codified into KRS 16.055, which became effective June 24, 2003. Thus, pursuant to KRS 13A.120(2)(e) this administrative regulation is unnecessary and must be repealed.

Section 1. 502 KAR 5:010, Promotional system, is hereby repealed.

STEPHEN B. PENCE, Lieutenant Governor, Secretary
MARK MILLER, Commissioner
W. O. BRADLEY, Chairman
APPROVED BY AGENCY: March 4, 2004
FILED WITH LRC: March 11, 2004 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2004 at 10 a.m. EST in Room 105, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by April 15, 2004, five working days prior to the hearing, of their intent to attend. If you have a disability for which the Kentucky State Police needs to provide accommodation, please notify us of this requirement by April 15, 2004. This request does not have to be in writing. 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. Written comments shall be accepted until May 3, 2004. 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: Terry D. Edwards, Legal Counsel, Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6318, fax (502) 573-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry D. Edwards

1. Provide a brief summary of:
(a) What this administrative regulation does: This regulation acts specifically to repeal 502 KAR 5:010, Promotional system.
(b) The necessity of this administrative regulation: The provisions of 502 KAR 5:010 have been codified into KRS 16.055, which became effective June 24, 2003. Thus, pursuant to KRS 13A.120(2)(e), 501 KAR 5:010 is unnecessary and should be repealed.
(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation deletes an unnecessary administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation's only purpose is to repeal 502 KAR 5:010, Promotional system.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
How the amendment will change this existing administrative regulation: This administrative regulation is not an amendment.
(c) The necessity of the amendment to this administrative regulation: Refer to section (2)(a).
(d) How the amendment will assist in the effective administration of the statutes: Refer to section (2)(a).
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Refer to section (1)(b).
(f) 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: Refer to section (1)(b).
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None, this is a repealer administrative regulation.
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None, this is a repealer administrative regulation.
(d) 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 and no increases in funding to implement this administrative regulation. This administrative regulation's only purpose is to repeal 501 KAR 5:010, Promotional system.
(e) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees in this administrative regulation. This administrative regulation's only purpose is to repeal 501 KAR 5:010, Promotional system.
(f) TIERING: Is tiering applied? No. This administrative regulation's only purpose is to repeal 501 KAR 5:010, Promotional system.

TRANSPORTATION CABINET
Department Of Vehicle Regulation
(Repealer)


RELATES TO: KRS Chapter 56A, Chapter 174, Chapter 176, Chapter 177, Chapter 183
STATUTORY AUTHORITY: KRS 13A.120, 174.080, 49 C.F.R. Part 23
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation acts specifically to repeal 600 KAR 4:020, The Disadvantaged, Minority and Women Business Enterprise Program. The provisions in 600 KAR 4:020 are obsolete under current federal law.
VOLUME 30, NUMBER 10 – April 1, 2004

Section 1. 600 KAR 4:020, The Disadvantaged, Minority and Women Business Enterprise Program, is hereby repealed.

ARTHUR MCKEE, JR., Executive Director
MAXWELL C. BAILEY, Secretary
APPROVED BY AGENCY: March 11, 2004

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 22, 2004 at 10 a.m. at the Transportation Cabinet Office Building, 6th Floor Conference Room, 612 200 Merlo Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement by April 15, 2004. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 3, 2004. 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: Dana C. Fugazzi, Staff Attorney III, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana Fugazzi

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation acts specifically to repeal 600 KAR 4:020, The Disadvantaged, Minority and Women Business Enterprise Program.
   (b) The necessity of this administrative regulation: 600 KAR 4:020 is no longer necessary as it is obsolete under current federal law.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This deletes an unnecessary administrative regulation.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation's only purpose is to repeal 600 KAR 4:020, The Disadvantaged, Minority and Women Business Enterprise 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: This administrative regulation is not an amendment.
   (b) The necessity of the amendment to this administrative regulation: Refer to (2)(a).
   (c) How the amendment conforms to the content of the authorizing statutes: Refer to (2)(a).
   (d) How the amendment will assist in the effective administration of the statutes: Refer to (2)(a).
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Refer to (1)(b).
   (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: Refer to (1)(b).
   (5) Provide an estimate of how much it will cost to implement this administrative regulation:
      (a) Initially: None, this is a repealer administrative regulation.
      (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: None, this is a repealer 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: There are no fees and no increases in funding to implement this administrative regulation. This regulation's only purpose is to repeal 600 KAR 4:020, The Disadvantaged, Minority and Women Business Enterprise Program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees in this administrative regulation. This administrative regulation's only purpose is to repeal 600 KAR 4:020, The Disadvantaged, Minority and Women Business Enterprise Program.

(9) TIERING: Is tiering applied? No. This regulation's only purpose is to repeal 600 KAR 4:020, The Disadvantaged, Minority and Women Business Enterprise Program.

TRANSPORTATION CABINET
Motor Vehicle Commission
(New Administrative Regulation)

605 KAR 1:060. Temporary off-site sale or display event.

RELATES TO: KRS 190.030(7)
STATUTORY AUTHORITY: KRS 190.020, 190.030, 190.073
NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.030 requires a motor vehicle dealer to restrict the sale or display of motor vehicles to the location of the dealer's licensed place of business except that a motor vehicle dealer may have a temporary sale or display of motor vehicles at a location other than the licensed place of business under certain conditions. KRS 190.030(1) authorizes the Motor Vehicle Commission to provide by administrative regulation for "other licensee activities and an appropriate fee therefor." This administrative regulation establishes the application requirements or holding a temporary sale or display event.

Section 1. Definition. "Display" means a showing of a motor vehicle or vehicles at a location in this state where no sale, transfer, or test drive takes place.

Section 2. (1) A motor vehicle dealer shall not conduct or participate in a motor vehicle sale or display event at any location other than the dealer's licensed place of business unless an application for a temporary sale or display permit is filed with the Motor Vehicle Commission and approved.
   (2) The application shall be received a minimum of five (5) days prior to the next regularly-scheduled meeting of the commission held before the requested permit period. The temporary sale or display permit application shall state:
      (a) The duration of its validity; a motor vehicle display shall not exceed sixty (60) successive days, and a motor vehicle sale shall not exceed five (5) successive days;
      (b) The specific location of the temporary sale or display event for which the permit is requested;
      (c) Proof that the city, county, urban county or consolidated local government where the temporary sale or display event is to occur has enacted an ordinance specifically allowing a motor vehicle dealer to conduct a motor vehicle temporary sale or display event in its jurisdiction at a location other than the dealer's licensed place of business;
      (d) That the temporary sale event has been, is being, or will be advertised as being temporary in nature; and
      (e) That the temporary sale event will include a representative sampling of the inventory of the participating dealer or dealers.

Section 3. The fee for a temporary sale event permit shall be $100 per participating dealer.

Section 4. Incorporation by Reference. (1) "Application for Temporary Sale or Display Event," revised March 2004, is incorporated by reference.
   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Motor Vehicle
Commission, 403 Wapping Street, Frankfort, Kentucky.

RAYMOND COTTRELL, SR., Chairman
APPROVED BY AGENCY: March 15, 2004
FILED WITH LRC: March 15, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, April 28, 2004 at 10 a.m., EST, at the office of the Motor Vehicle Commission, 403 Wapping Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 3, 2004. 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: David Garnett, Executive Director, Kentucky Motor Vehicle Commission, 403 Wapping Street, Frankfort, Kentucky 40622, phone (502) 564-3750, fax (502) 564-3750.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Garnett, Executive Director

(1) Provide a brief summary of:
   (a) What this administrative regulation does: The Kentucky Motor Vehicle Commission ("Commission") licenses and regulates all motor vehicle dealers in Kentucky. Motor vehicle dealers are required by KRS 190.030 toconfine the display and sale of motor vehicles to a dealer's licensed place of business. However, this statute also provides authority for a dealer to engage in the business of a dealer at certain other locations. This proposed administrative regulation requires Kentucky motor vehicle dealers to provide to the commission proof of compliance with statutory requirements before engaging in a motor vehicle sale or display event at any location other than the dealer's licensed place of business. A dealer seeking to display or sell motor vehicles at any location other than his licensed place of business will be required by this proposed administrative regulation to provide the following to the commission:
   1. Proof that the governmental body having primary jurisdiction over the location where the sale or display event is to occur has enacted an ordinance that specifically allows a motor vehicle dealer to sell or display motor vehicles in its jurisdiction, at a location other than the dealer's licensed place of business; and
   2. Verification that the sale or display event is advertised as being temporary in nature; and
   3. Verification that the sale or display event will include a representative sampling of the inventory of the participating dealer(s); and
   4. A fee of $100 for each dealer participating in a motor vehicle sale, but no fee is charged for a motor vehicle display.
   KRS 190.030(7) describes such sale or display events as being "temporary." The proposed administrative regulation limits the duration of a temporary motor vehicle sale event to no more than 5 successive days, consistent with 605 KAR 1:170, (Temporary sale or display event license for a Motor Vehicle Dealer Trade Association), A motor vehicle display event, however, is limited to no more than 60 successive days.
   (b) The necessity of this administrative regulation: The need for the regulation is shown by the number of violations that have come before the commission since the effective date (June 25, 2003) of an amendment to KRS 190.030 that prohibits a Kentucky motor vehicle dealer from engaging in business at any location other than the dealer's licensed place of business. The statutory amendment allows a motor vehicle dealer to engage in a temporary motor vehicle sale or display event at a location other than the licensed place of business if certain conditions are met. Chief among these is a requirement that the city, county, or other entity having primary jurisdiction over a location where a temporary motor vehicle sale or display event is to be held must first enact an ordinance allowing such activities. Many jurisdictions already have in place ordinances that provide for the issuance of business licenses to itinerant or transient merchants. Many jurisdictions have considered these transient merchant ordinances as meeting the requirement, set forth in KRS 190.030(7), of an ordinance permitting motor vehicle sale or display events at locations other than a dealer's licensed place of business. However, these transient merchant ordinances do not meet the statutory requirement of an enabling ordinance for the following reasons:
      1. They were not enacted in contemplation of the statutory amendment; and
      2. They may not address the specific issue of allowing temporary motor vehicle sale or display events at locations other than licensed places of business; and
      3. The statutory amendment to KRS 190.030 was designed to require the enactment of enabling ordinances for temporary motor vehicle sale or display events so that motor vehicle dealers in a particular jurisdiction would have an opportunity to provide comment on such an ordinance.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation is being promulgated pursuant to KRS 190.020 and 190.073. The latter statute states that the commission shall promulgate appropriate and reasonable regulations for the purpose of carrying out the provisions of this chapter.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The promulgation will assist in the effective administration of the provisions of KRS Chapter 190 by clarifying the requirements for compliance therewith.
   (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 contents of the authorizing statutes:
      (d) How the amendment will assist in the effective administration of the statutes: This 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 entities affected by the promulgation of this administrative regulation will be the approximately 3,700 retail motor vehicle dealers licensed in Kentucky, and each city, county, or other governmental entity which agrees to consider the enactment of an ordinance on the subject of motor vehicle sale or display events.
   (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 existing statute (KRS 190.030) requires each motor vehicle dealer who wishes to conduct or participate in a motor vehicle sale or display event at a location other than the dealer's licensed place of business to comply with its provisions. The proposed administrative regulation merely requires proof or verification of that compliance by dealers. The governing body of each city, county, or other jurisdiction in Kentucky may be requested to consider and enact an ordinance allowing motor vehicle sales or display events at locations other than a dealer's licensed place of business.
   (5) Provide an estimate of how much it will cost to implement this administrative regulation:
      (a) Initially: There is no cost to a dealer who sells or displays motor vehicles at his licensed place of business. Dealers who participate in a sale event at a location other than the licensed place of business will be charged a one-time permit fee of $100 for each such event. Dealers who wish to merely display motor vehicles at a location other than their licensed place of business for a temporary period will not be charged a fee. The cost to cities, counties, and other jurisdictions would be the normal expenses associated with
drafting and enacting an ordinary ordinance. Costs to the agency in receiving, reviewing, and verifying an application for a permit will be offset by the $100 sale permit fee.

(b) On a continuing basis: See response to (5)(a) above.

(9) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Motor Vehicle Commission operates exclusively from the license fees it collects from motor vehicle dealers, manufacturers and salespersons; it receives no General Fund or Road Fund appropriation. The commission's costs in implementing the proposed administrative regulation are only those associated with normal personnel time invested in drafting and filing the regulation and attending the hearings. The commission's costs associated with enforcing the proposed administrative regulation will be passed on to dealers by way of the permit fee specified in the regulation, and monetary penalties assessed for violations of the 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 existing fees and no increase in funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation establishes a fee at the rate of $100 for each motor vehicle dealer who wishes to conduct or participate in a motor vehicle sale event held at a location other than a dealer's licensed place of business. This fee is consistent with the fee charged under a similar administrative regulation, 605 KAR 1:170, promulgated in 1988.

(9) TIERING: Is tiering applied? Tiering was used in the formulation of the administrative regulation as follows: a permit fee of $100 is charged for each dealer seeking a permit for a temporary motor vehicle sale event to be held at a location other than the dealer's licensed place of business. However, a dealer seeking a permit for a temporary motor vehicle display event at a location other than his licensed place of business will not be charged a fee for the permit. Dealers are often requested to supply a motor vehicle for display purposes for events hosted by charities and civic groups. The proposed regulation recognizes this and imposes a fee for a purely commercial, profit-making exercise (sale), but not for a passive display where no sale takes place.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part, or division of local government this administrative regulation will affect. The administrative regulation may affect every city, county, urban county, and consolidated local government in Kentucky. This administrative regulation does relate to an aspect of a local government, including a service provided by that local government, but only to the extent that a motor vehicle dealer who wishes to engage in the business of a motor vehicle dealer at a location other than his licensed place of business can do so only in a city, county, or other jurisdiction that has enacted an ordinance that specifically allows motor vehicle sales or display events to be conducted in that jurisdiction at a location other than a dealer's licensed place of business.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or services or authorizes the action taken by the administrative regulation. The extent to which the administrative regulation may affect a local government entity is limited to the drafting, consideration, and enactment of an ordinance or other legislative provision allowing motor vehicle dealers to engage in business within the jurisdiction of the governmental entity at any location other than the dealer's licensed place of business. KRS 190.030(7) limits the sale or display of motor vehicles by a motor vehicle dealer to the dealer's licensed place of business except that a dealer may display or sell motor vehicles at a different location if the governmental entity having jurisdiction over that location has enacted an enabling ordinance allowing a temporary sale or display at a location other than a dealer's licensed place of business.

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. This administrative regulation is not expected to have any effect on the revenue of a local government. The administrative regulation is expected to affect expenditures of a local government only to the extent that drafting and considering an enabling ordinance requires certain resources, such as the use of personnel and supplies. As these functions are already a primary function of a local government entity, any expenditure incurred by reason of the administrative regulation is negligible.
The March meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, March 9, 2004, at 9:30 a.m. in Room 12b of the Capitol Annex. Senator Damon Thayer, Co-Chair, called the meeting to order, and the roll call was taken. The minutes of the February 10, 2004 meeting were approved.

Present were:

- Members: Senator Damon Thayer, Co-Chair, Representative Tanya Pullin, Co-Chair; Senators Joeiy Pendleton, Richard Roeding, and Gary Tapp; Representatives James Bruce, Jimmie Lee, and Jon David Reinhardt.
- LRC Staff: Dave Nicholas, Donna Little, Donna Kemper, Sarah Amburgey, Karen Howard, Laura Milam, Ellen Steinberg, Emily Caudill, and Jennifer Harrison.
- Guests: Ryan Halloran, Sarah Johnson, State Board of Elections; Nathaniel Goldman, Board of Nursing; Mack Bushart, Bill Chiebry, Paul Fitch, Emily Harkenridge, Jeffrey Pratt; Environmental and Public Protection Cabinet; Eddie Deskins, Dana Fugazzi, Mary A. Morris, Rick Taylor; David Woodford, Transportation Cabinet; Russ Findley, Ann Trutt Hunsaker, Cabinet for Family and Health Services; Chris Stalling, John Winstead, Environmental and Public Protection Cabinet; Nancy Galvagni, Kentucky Hospital Association; Bart Baldwin, Children's Alliance; Erv Klein, Glanz Heating and Plumbing; Steven Milby; Darby Paschell, Baptist Healthcare Systems.

The Administrative Regulation Review Subcommittee met on Tuesday, March 9, 2004, and submits this report:

OTHER BUSINESS:

Representative Bruce announced that House Bill 295, which created a new section of KRS Chapter 13A declaring the administrative regulations found deficient since March 29, 2002 to be null, void, and unenforceable, had passed both houses and had been sent to the governor. He stated that he appreciated Co-Chair Thayer’s excellent work in leading the bill through the Senate.

Co-Chair Thayer thanked Representative Bruce for sponsoring the important bill and stated that he was pleased that the bill was one of the few that had passed both houses this legislative session.

Additionally, Representative Bruce stated that he had concerns regarding a duck hunting ban by Kentucky vehicle enforcement officers to people at a farm show in Indiana. Those people were informed that Kentucky would be ticketing gooseneck trucks that were hauling farm items using a Kentucky farm tag. Representative Bruce stated that this action would violate a Kentucky law enacted in 1974.

Senator Pendleton stated that this event happened in the Indiana area near Henderson, Kentucky.

Mack Bushart, Commissioner, Department of Vehicle Regulation, stated that he had talked with Senator Pendleton about the allegations and his office was still checking to see who made the statements. His office had not sent out any directives to the regional enforcement offices directing them to begin this type of enforcement. He would continue to research the allegations and find out what was said and assured the Subcommittee that the enforcement officers would only enforce the law.

Administrative regulations reviewed by the Subcommittee:

State Board of Elections: Help America Vote Act 2002

31 KAR 6:010 & E. State-based administrative complaint procedure. Sarah Johnson, Executive Director, and Ryan Halloran, Assistant Attorney General, represented the Board.

A motion was made and seconded to approve the following amendments: (1) to amend the NEEDSITY, FUNCTION, AND CONFORMITY paragraph to insert authorizing language; and (2) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements. Nathan Goldman represented the Board.

Environmental and Public Protection Cabinet: Department for Environmental Protection: Water Quality

401 KAR 5:006. Permits to construct, modify, or operate a facility. Jeff Pratt, Director, represented the Division.

A motion was made and seconded to approve the following amendments: to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:018. Special overweight or overdimensional permits. Mark Elam, Rick Taylor, and Jana Fugazzi, Staff Attorney, represented the Cabinet.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 4, 7, 9, 10, 11, 14, 16, and 22 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend Section 16(2) to (a) delete provisions that conflicted with other provisions in the administrative regulation; and (b) exempt farm implements or equipment from the requirements of that section if the specified criteria were met; and (3) to amend Section 16 to correct a statutory citation. Without objection, and with agreement of the agency, the amendments were approved.

Motor Vehicle Tax

601 KAR 9:085. Procedures for becoming a certified motor vehicle inspector. A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct a statutory citation; (2) to amend the NEEDSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (3) to amend Sections 1, 2, 6, 7, 8, and 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to delete the Section 8 hearing provisions since they were already established in KRS Chapter 13B. Without objection, and with agreement of the agency, the amendments were approved.

Department of Highways: Traffic

603 KAR 5:066. Weight (mass) limits for trucks. A motion was made and seconded to approve the following amendments: (1) to amend the NEEDSITY, FUNCTION, AND CONFORMITY paragraph to correct a statutory citation; and (2) to amend Sections 1 to 5 and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

603 KAR 5:070. Motor vehicle dimension limits. A motion was made and seconded to approve the following amendments: (1) to amend the NEEDSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (2) to amend Sections 1, 4, 6, and 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Environmental and Public Protection Cabinet: Department of Charitable Gaming: Charitable Gaming

620 KAR 1:001. Definitions for 620 KAR Chapter 1. John Winstead, Commissioner, and Chris Stallings, Staff Attorney, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend the NEEDSITY, FUNCTION AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (2) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the
agency, the amendments were approved.

820 KAR 1:040. Bingo standards. In response to a question by Senator Roeding, Mr. Stallings stated that this administrative regulation established firm deadlines for distributors of card-minding devices, but did not affect the deadlines for charitable organizations to receive their licenses. The Department would continue to work to improve the licensing process and to respond to questions from charitable organizations in a timely manner.

A motion was made and seconded to approve the following amendments: (1) to add the STATUTORY AUTHORITY paragraph to correct statutory citations; (2) to add the NECESSITY, FUNCTION AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (3) to amend Sections 1 to 10 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to add Section 11 to incorporate by reference forms required for distributors of card-minding devices. Without objection, and with agreement of the agency, the amendments were approved.

Cabinet for Health and Family Services: Department for Medicaid Services

907 KAR 1:013 & 3. Payments for hospital inpatient services. Russ Fendley, Commissioner, and Ann Hunsaker, Counsel, represented the Department. Nancy Galvagni, Kentucky Hospital Association, appeared in support of this administrative regulation.

In response to a question by Co-Chair Pullin, Mr. Fendley stated that this administrative regulation established reimbursement rates for Levels II and III neonatal facilities in an effort to more adequately compensate them for the services they provided.

In response to a question by Senator Pendleton, Mr. Fendley stated that the Department agreed to pay $28 million in a settlement with the Kentucky Hospital Association and divided that money between the state's hospitals. The payment methodology established in this administrative regulation resulted from over a year's worth of negotiations and work with the Kentucky Hospital Association and providers and would continue to be monitored and revised as needed. He met with representatives of the Methodist Hospital on two occasions regarding their payment concerns and would continue to meet with them to find a solution. However, given the current budget constraints, it would be difficult to address their concerns in the manner the hospital wanted.

In response to a question by Representative Reinhardt, Mr. Fendley stated that this administrative regulation did not impact Cincinnati Children's Hospital except for establishing the reimbursements.

A motion was made and seconded to approve the following amendments: (1) to add the STATUTORY AUTHORITY paragraph to correct a statutory citation; (2) to amend Sections 1, 3, 4, 7, 10, 11, 14, 20, and 22 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 11 to specify that inpatient services provided to an eligible Medicaid recipient in a psychiatric hospital designated as a primary referral and service resource for a child in state custody shall be reimbursed at the specific per diem rate of $489.75, rather than according to a formula based on the 1999 cost report. Without objection, and with agreement of the agency, the amendments were approved.

The Subcommittee and the promulgating administrative agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:

Environmental and Public Protection Cabinet: Department for Environmental Protection: Water Quality

401 KAR 5:002. Definitions for 401 KAR Chapter 5.
401 KAR 5:026. Designation of uses of surface waters.
401 KAR 8:029. General provisions.
401 KAR 5:031. Surface water standards.

Department for Surface Mining Reclamation and Enforcement:

General Provisions
405 KAR 7:001. Definitions for 405 KAR Chapter 7.

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

Bond and Insurance Requirements
405 KAR 10:001. Definitions for 405 KAR Chapter 10.
Inspection and Enforcement
405 KAR 12:001. Definitions for 405 KAR Chapter 12.
Performance Standards for Surface Mining Activities
405 KAR 16:001. Definitions for 405 KAR Chapter 16.
Performance Standards for Underground Mining Activities
405 KAR 18:001. Definitions for 405 KAR Chapter 18.

Special Performance Standards
405 KAR 20:001. Definitions for 405 KAR Chapter 20.

Areas Unsuitable for Mining

Department of Financial Institutions: Mortgage Loan Companies and Mortgage Loan Brokers
808 KAR 12:055. Disclosure for lender/broker making less than five (5) loans per year.

Cabinet for Health and Family Services: Department for Public Health: Communicable Diseases
902 KAR 2:055. Immunization data reporting and exchange.

Department for Community Based Services: Protection and Permanency: Child Welfare
922 KAR 1:050. Approval of adoption assistance.
922 KAR 1:310. Standards for child-placing agencies.
922 KAR 1:320. Services appeals.
922 KAR 1:480. Appeal of child abuse and neglect investigative findings.

Block Grants
922 KAR 3:020. Grant services and eligibility.

The Subcommittee adjourned at 10:00 a.m. until April 2004.
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 AND HOUSE STANDING COMMITTEES ON
TRANSPORTATION
Meeting of March 3, 2004

The following administrative regulations were available for consideration by the Senate and House Transportation Committees during their meetings of March 3, 2004 and February 26, 2004, respectively, having been referred to the Committee on February 17, 2004, pursuant to KRS 13A.290(6):

- 601 KAR 1:005
- 601 KAR 9:135
- 601 KAR 11:040
- 601 KAR 11:061
- 601 KAR 12:031

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulation was approved as amended by two separate amendments at the Committee meeting pursuant to KRS 13A.320:

- 601 KAR 1:005

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 3, 2004 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates ................................................................. J - 2

The Locator Index lists all administrative regulations published in VOLUME 30 of the Administrative Register from July, 2003 through June, 2004. 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 29 are those administrative regulations that were originally published in VOLUME 29 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2003 bound Volumes were published.

KRS Index ............................................................................................................ J - 16

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 30 of the Administrative Register.

Subject Index ..................................................................................................... J - 27

The Subject Index is a general index of administrative regulations published in VOLUME 30 of the Administrative Register, and is mainly broken down by agency.
<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>Effective Date</th>
<th>Regulation Number</th>
<th>Effective Date</th>
</tr>
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<tbody>
<tr>
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<td>1-21-03</td>
<td>900 KAR 6:050E</td>
<td>1-8-03</td>
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<td>8-18-03</td>
<td>902 KAR 17:041E</td>
<td>7-16-03</td>
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<td>4-4-03</td>
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<td>4-1-03</td>
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<td>(See Volume 30)</td>
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<td>(See Volume 30)</td>
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<td>(See Volume 30)</td>
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<td>(See Volume 30)</td>
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<td>(See Volume 30)</td>
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<td>8-13-03</td>
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**VOLUME 30**

**EMERGENCY ADMINISTRATIVE REGULATIONS:**
(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)

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J - 20
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J - 21
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<td>20 U.S.C.</td>
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</tbody>
</table>
SUBJECT INDEX

ACCOUNTANCY, BOARD OF
Computer-based examination section, application, procedures; 201 KAR 1:190

ADOPTIONS
(See Child Welfare)

AGRICULTURE
Organic Agricultural Product Certification
Certification of production, processing, handling operations; 302 KAR 40:010

AGRITOURISM
Agritourism; 302 KAR 39:010

AIR QUALITY
Attainment, Maintenance, of Ambient Air Quality Standards
Definitions; 401 KAR 51:001
Nonattainment areas, review of new sources in or impacting upon; 401 KAR 51:052
Significant deterioration prevention; 401 KAR 51:017
Permits, Registrations, and Prohibitory Rules
Regulatory limit on potential to emit; 401 KAR 52:080
General Standards of Performance
Open burning; 401 KAR 83:005

ALCOHOLIC BEVERAGE CONTROL BOARD
ABC Board
Procedure; 804 KAR 6:010
Advertising Distilled Spirits and Wine
Repealer; 804 KAR 1:131
Business, Employees, Conduct of Minors; 804 KAR 5:070
Licensing
Beer storage; 804 KAR 4:130
Beer transporter; 804 KAR 4:160
Brand registration; 804 KAR 4:240
Brew-on-premises license; 804 KAR 4:340
Caterer's license; 804 KAR 4:310
Distributors' storage; 804 KAR 4:140
Extended hours supplemental licenses; 804 KAR 4:230
Farm and winery; 804 KAR 4:380
Licenses, special temporary; 804 KAR 4:250
Nonresident; 804 KAR 4:030
Out-of-state brewers' licenses; 804 KAR 4:350
Repealer; 804 KAR 4:081
Riverboats; 804 KAR 4:220
Storage, bottling house; 804 KAR 4:040
Track license; 804 KAR 4:260
Quotas
Retail limit; 804 KAR 9:010
Retail Premises
Repealer; 804 KAR 7:041
Transportation of Alcoholic Beverages
Vehicles' signs; 804 KAR 8:050

AQUATIC ORGANISMS
(See Fish and Wildlife Resources)

ARCHITECTS
Certification qualifications; 201 KAR 19:315

ATTORNEY GENERAL
Consumer Protection
Contact lens seller annual registration; 40 KAR 2:340

BINGO
(See Charitable Gaming)

BLOCK GRANTS
(See Community Based Services)

BOATING
(See Fish and Wildlife Resources)

BODY PIERCING
(See Public Health)

BREATH ANALYSIS OPERATORS
Breath alcohol analysis instruments; 500 KAR 8:020
Chemical analysis test, administration of; 500 KAR 8:030

BUILDING CODE
(See Kentucky Building Code)

CHARITABLE GAMING
Bingo standards; 820 KAR 1:043
Definitions; 820 KAR 1:001

CHILD WELFARE
Adoption assistance, approval cf; 922 KAR 1:050
Child-placing agencies, standards for; 922 KAR 1:310
Child protective services; 922 KAR 1:330
Family preparation; 922 KAR 1:350
Service appeals; 922 KAR 1:320

CHILDREN WITH SPECIAL HEALTH CARE NEEDS COMMISSION
Early Intervention System
Assessment, service planning; 911 KAR 2:130
Coverage, payment, program services; 911 KAR 2:200
Evaluation, eligibility; 911 KAR 1:120
Program assessment, service planning; 911 KAR 2:130
Program evaluation and eligibility; 911 KAR 2:120

COMMERCIAL MOBILE RADIO SERVICE EMERGENCY TELECOMMUNICATIONS BOARD
PSAP Phase II certification; 202 KAR 6:100

COMMONWEALTH MERIT SCHOLARSHIP PROGRAM
(See Higher Education Assistance Authority)

COMMUNICABLE DISEASES
(See Public Health)

COMMUNITY BASED SERVICES
Family Support
Food Stamp Program
Certification process; 921 KAR 3:035
Issuance procedures; 921 KAR 3:045
K-TAP, Kentucky Works, Welfare to Work, State Supplementation
Adverse action conditions; 921 KAR 2:046
Repealer; 921 KAR 2:451
Supplemental programs, aged, blind, disabled; 921 KAR 2:015
SUBJECT INDEX

Policy Development
Commonwealth Child Care Credential; 922 KAR 2:250
Director’s credential; 922 KAR 2:230
Educational and training vouchers; 922 KAR 1:500
Protection and Permanency
Block Grants
Services, eligibility; 922 KAR 3:020
Day Care
Family child care homes, certification; 922 KAR 2:100

CONSUMER PROTECTION
(See Attorney General)

CORRECTIONS, DEPARTMENT OF
Institution Policy and Procedures
Corrections policies and procedures; 501 KAR 6:020
Frankfort Career Development Center; 501 KAR 6:090
Kentucky State Penitentiary; 501 KAR 6:040
Secured policies and procedures; 501 KAR 6:999

COSMETICS
(See Hairdressers or Public Health)

COSMETOLOGISTS
(See Hairdressers, Cosmetologists)

CRIME VICTIMS COMPENSATION BOARD
Payment schedule of reported victims; 107 KAR 2:010

CRIMINAL JUSTICE TRAINING
(See also Justice and Public Safety Cabinet)
General Training Provision
Telecommunications academy
Graduation requirements, records; 503 KAR 3:050
Non-CJJS; 503 KAR 3:070
Law Enforcement Council
Career Development Program; 501 KAR 1:170
Graduation requirements, records; 503 KAR 1:160

DAY CARE
(See Community Based Services)

DENTISTRY, BOARD OF
Expungement of records; 201 KAR 8:490

DRIVER TRAINING
(See State Police and Justice and Public Safety Cabinet)

EARLY CHILDHOOD DEVELOPMENT SCHOLARSHIP
(See Higher Education Assistance Authority)

EDUCATION CABINET
(See also Higher Education Assistance Authority; Postsecondary Education)
Learning Programs Development
Instruction; 704 KAR Chapter 3
Learning support services; 704 KAR Chapter 7
Learning Results Services
Assessment and Accountability; 703 KAR Chapter 5

EDUCATION PROFESSIONAL STANDARDS BOARD
Administrative Certificates
Directors, assistant directors of pupil personnel, professional certificate; 16 KAR 3:030
Repealer; 16 KAR 3:054
School principal, all grades, professional certificate for instructional leadership; 16 KAR 3:050
School superintendent certification; 16 KAR 3:010
Special education director; 16 KAR 3:040
Supervisor of instruction certification; 16 KAR 3:020
Assessment
Examination prerequisites for principal certification; 16 KAR 6:030
Educator Preparation
Repealer; 16 KAR 5:009
General Administration
Teachers’ National Certification Incentive Trust Fund; 16 KAR 1:040
Internship
Kentucky Teacher Internship Program; 16 KAR 7:010

EDUCATIONAL SAVINGS PLAN TRUST
(See Higher Education Assistance Authority)

ELECTIONS, STATE BOARD
(See Voting)
Help America Vote Act 2002
Provisional voting; 31 KAR 6:020
State-based administrative complaint procedure; 31 KAR 6:010
Statewide Voter Registration
Distribution of voter registration lists, current address of Kentucky registered voters; 31 KAR 3:010

ELECTRICAL INSPECTORS
(See Housing, Buildings and Construction)

ELEVATOR SAFETY
(See Housing, Buildings and Construction)

EMBALMERS, FUNERAL DIRECTORS
Funeral establishments; 201 KAR 15:100
Applicants holding license in another state, requirements; 201 KAR 15:120

EMERGENCY MEDICAL SERVICES BOARD
Advisory opinions; 202 KAR 7:055
Air ambulance services; 202 KAR 7:510
Ambulance providers, medical first response agencies; 202 KAR 7:501
Board organization; 202 KAR 7:020
Definitions; 202 KAR 7:010
EMT; 202 KAR 7:301
Fees; 202 KAR 7:030
First responders; 202 KAR 7:201
Medical directors; 202 KAR 7:801
Paramedics; 202 KAR 7:401
Repealer; 202 KAR 7:452
Training, education, continuing education; 202 KAR 7:801

EMPLOYMENT SERVICES (WORKFORCE DEVELOPMENT)
Unemployment Insurance
Unemployed worker’s reporting requirements; 787 KAR 1:090

ENGINEERS, LAND SURVEYORS, BOARD OF
Administrative hearings; 201 KAR 18:220
Fees; 201 KAR 18:040

ENVIRONMENTAL PROTECTION
(See Natural Resources, Environmental Protection)
Environmental Protection
Remediation requirements; 401 KAR 100:030

ESTHETICIANS
(See Hairdressers, Cosmetologists)

ETHICS COMMISSION
Executive Branch Ethics Commission; 9 KAR Chapter 1

EXECUTIVE BRANCH ETHICS COMMISSION
Registration, expenditure statements, financial transactions, termination forms, handbooks, enforcement; 9 KAR 1:040

J - 28
EXOTIC WILDLIFE
(See Fish and Wildlife Resources)

FAMILIES AND CHILDREN
Administration
Protection of human subjects; 920 KAR 1:060
Community Based Services
Protection and Permanency
Block Grants, 922 KAR Chapter 3
Child Welfare; 922 KAR Chapter 1
Day care; 922 KAR Chapter 2
Family Support
Food Stamp Program; 921 KAR Chapter 3
K-TAP, Kentucky Works, Welfare to Work, State Supplementation; 921 KAR Chapter 2

FARMERS MARKETS
(See Public Health)

FINANCE AND ADMINISTRATION CABINET
Purchasing; 200 KAR Chapter 5
State-owned buildings, grounds; 200 KAR Chapter 3

FINANCIAL INSTITUTIONS
Check Cashing
Electronic fund transfer from customer accounts, limitation; 808 KAR 9:040
Mortgage Loan Companies, Brokers
Broker residence office, requirements of; 808 KAR 12:075
Continuing education requirements; 808 KAR 12:095
Definitions; 808 KAR 12:002
Disclosure, lender/broker, less than 5 loans per year; 808 KAR 12:055
Exemption claims; 808 KAR 12:020
Registration, loan officer/broker; 808 KAR 12:085
Regulation of charges for services rendered in processing, closing real estate loans to consumers; 808 KAR 12:050

FISH AND WILDLIFE RESOURCES
Fish
Fishing limits; 301 KAR 1:201
Free fishing days; 301 KAR 1:210
Propagation of aquatic organisms; 301 KAR 1:115
Reciprocal agreements regarding fishing; 301 KAR 1:220
Repealer; 301 KAR 1:301
Snagging; 301 KAR 1:202
Game
Captive cervids, transportation, holding of; 301 KAR 2:083
Deer hunting on WMAs; 301 KAR 2:178
Deer hunting seasons, requirements; 301 KAR 2:172
Dove, wood duck, teal, migratory game bird hunting; 301 KAR 2:225
Exotic wildlife, transportation, holding of; 301 KAR 2:082
Native wildlife, transportation, holding of; 301 KAR 2:081
Shooting preserves, foxhound training enclosures; 301 KAR 2:041
Waterfowl hunting requirements; 301 KAR 2:222
Waterfowl seasons, limits; 301 KAR 2:221
Wild turkey, fall hunting; 301 KAR 2:144
Hunting and Fishing
Fees, license, tag, permit; 301 KAR 3:022
Year-round seasons, unprotected wildlife; 301 KAR 3:030
Water Patrol
Safe boating certification; 301 KAR 6:060
Wildlife
Peabody WMA, use requirements, restriction; 301 KAR 4:100

FOOD, COSMETICS (HEALTH SERVICES)
(See Public Health)

FOOD STAMP PROGRAM
(See Community Based Services)

FUNERAL DIRECTORS
(See Embalmers, Funeral Directors)

GAME
(See Fish and Wildlife Resources)

GRANT PROGRAMS
(See Higher Education Assistance Authority)

HAIRDRESSERS, COSMETOLOGISTS
Apprentices; 201 KAR 12:045
Continuing education requirements for active, inactive license, temporary waiver of requirements; 201 KAR 12:210
Course of instruction, schools; 201 KAR 12:082
Course of instruction, esthetics; 201 KAR 12:088
Educational requirements; 201 KAR 12:083
Esthetic fee requirements; 201 KAR 12:220
Esthetics salons, requirements; 201 KAR 12:070
Equipment, school; 201 KAR 12:140
Equipment sanitation; 201 KAR 12:101
Ethics; 201 KAR 12:230
Examination; 201 KAR 12:020
Examination failure; 201 KAR 12:025
Identification, public; 201 KAR 12:080
Inspections; 201 KAR 12:080, 201 KAR 12:065
License; 201 KAR 12:030
License, instructor's; 201 KAR 12:055
License, dual cosmetologist/esthetics instructor; 201 KAR 12:240
License posting, replacement; 201 KAR 12:031
License renewal, continuing education; 201 KAR 12:200
Reciprocity; 201 KAR 12:050
Records, school; 201 KAR 12:150
Sanitation standards; 201 KAR 12:100
School faculty; 201 KAR 12:120
School license; 201 KAR 12:110
School requirements, esthetics course; 201 KAR 12:115
Student regulations; 201 KAR 12:125

HEALTH AND FAMILY SERVICES (CABINET)
Administration
Certificate of need expenditure minimums; 900 KAR 6:030
Children with Special Health Care Needs Commission
Early Intervention System; 911 KAR Chapter 2
Inspector General; 906 KAR Chapter 1
Medicaid Services
Services; 907 KAR Chapter 1
Public Health
Food and cosmetics; 902 KAR Chapter 45
Health services, facilities; 902 KAR Chapter 20
Communicable diseases; 902 KAR Chapter 2

HELP AMERICA VOTE ACT 2002
(See Elections, State Board of and Voting)

HERITAGE COUNCIL
Military Heritage Commission
Officers and meetings; 202 KAR 8:020
Nomination process heritage designation; 202 KAR 8:030

HIGHER EDUCATION ASSISTANCE AUTHORITY
Authority
Educational institution participation requirements; 11 KAR 4:040
Commonwealth Merit Scholarship Program
Definitions; 11 KAR 15:010
Early Childhood Development Scholarship Program
Applicant selection process; 11 KAR 16:010

J - 29
SUBJECT INDEX

Educational Savings Plan Trust
  Cancellation, partial withdrawal, refund payment; 11 KAR 12:050
Grant Programs
  CAP grant award determination procedure; 11 KAR 5:145
  CAP grant student eligibility; 11 KAR 5:034
  Definitions; 11 KAR 5:001
  Disbursement procedures; 11 KAR 5:160
  KTG award determination procedure; 11 KAR 5:140
  Student application; 11 KAR 5:130
Kentucky Affordable Prepaid Tuition Plan (KAPT)
  Administrative fees; 11 KAR 17:100
  Amendment of contract; 11 KAR 17:080
  Applying for prepaid tuition contract; 11 KAR 17:040
  Contract prices, payments, default; 11 KAR 17:050
  Definitions; 11 KAR 17:010
  Grievance procedure; 11 KAR 17:110
  Refunds, transfers; 11 KAR 17:090
  Terminating contract; 11 KAR 17:080
  Using contract benefits; 11 KAR 17:070
Kentucky Loan Program
  Administrative wage garnishment; 11 KAR 3:100
Osteopathic Medicine Scholarship Program
  Application of payments; 11 KAR 14:060
Robert C Byrd Honors Scholarship Program
  Program; 11 KAR 18:010
Teacher Scholarship Loan Program
  Scholarships; 11 KAR 8:030
Work Study Program
  Program; 11 KAR 6:010

HIGHER EDUCATION STUDENT LOAN CORPORATION
Insured student loans by corporation, eligibility; 15 KAR 1:040

HIGHWAYS
Traffic
  Motor vehicle dimension limits; 603 KAR 5:070
  Weight (mass) limits for trucks; 603 KAR 5:086

HOSPITALS, INSTITUTIONS
(See Medicaid or Public Health)

HOUSING, BUILDINGS AND CONSTRUCTION
Building Code
  Kentucky Building Code/2002; 815 KAR 7:120
Electrical inspectors
  Licensing, electrical contractors, electricians, master electricians; 815 KAR 35:050
Elevator safety
  Passenger elevators annual inspection; 815 KAR 4:010
Plumbing
  Parts or materials list; 815 KAR 20:020
  Traps, cleanouts; 815 KAR 20:110
HUNTING AND FISHING
(See Fish and Wildlife Resources)

INCOME TAX
(See Taxation)

INSPECTOR GENERAL (HEALTH SERVICES)
  Infrmal dispute resolution; 906 KAR 1:120

INSURANCE
Health insurance contracts
  Autism benefits for children, requirements; 806 KAR 17:460
  Data reporting requirements; 806 KAR 17:240
Standard health benefit plan, comparison format; 806 KAR 17:180
Authorization of Insurers, General Requirements
  Customer information, safeguarding standards; 806 KAR 3:230

JUSTICE AND PUBLIC SAFETY CABINET
Breath Analysis Operators; 500 KAR Chapter 8
Corrections Department
  Institution policies and procedures; 501 KAR Chapter 6
Criminal Justice Training
  Law Enforcement Council; 503 KAR Chapter 1
  General training provisions; 503 KAR Chapter 3
Juvenile Justice
  Child welfare; 505 KAR Chapter 1
State Police
  Candidate selection; 502 KAR Chapter 45
  Driver training; 502 KAR Chapter 10

JUVENILE JUSTICE
Child Welfare
  Definitions; 505 KAR 1:010
  Policies and procedures manual
  Detention services; 505 KAR 1:140
  Health and safety services; 505 KAR 1:120
  Juvenile services in community; 505 KAR 1:130
  Program services; 505 KAR 1:110
Local juvenile delinquency prevention councils
  Community Juvenile Justice Partnership Grant Program; 505 KAR 1:070
  Formation procedure; 505 KAR 1:050
  Operation and duties; 505 KAR 1:060

K-TAP, KENTUCKY WORKS, WELFARE TO WORK, STATE SUPPLEMENTATION
(See Community Based Services)

KENTUCKY AFFORDABLE PREPAID TUITION PLAN (KAPT)
(See Higher Education Assistance Authority)

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(See Higher Education Assistance Authority)

KENTUCKY HIGHER EDUCATION STUDENT LOAN CORPORATION
(See Higher Education Student Loan Corporation)

KENTUCKY LOAN PROGRAM
(See Higher Education Assistance Authority)

LABOR
Occupational Safety and Health; 803 KAR Chapter 2
Workers' claims; 803 KAR Chapter 25

LAW ENFORCEMENT COUNCIL
(See Criminal Justice Training; Justice and Public Safety Cabinet)
Peace officer professional standards; 503 KAR 1:140

LEARNING PROGRAMS DEVELOPMENT (EDUCATION)
  Instruction
    Repealer; 704 KAR 3:402
  Learning Support Services
    Student discipline guidelines; 704 KAR 7:050

LEARNING RESULTS SERVICES, BUREAU (EDUCATION)
  Assessment and Accountability
    Commonwealth Accountability Testing System administration procedures; 703 KAR 5:60
    Definitions; 703 KAR 5:001
    Formula for determining school accountability; 703 KAR 5:020

J - 30
SUBJECT INDEX

Inclusion of special populations in state-required programs, procedures; 703 KAR 5:070
School assistance, schoolex and audid county guidelines; 703 KAR 5:120
School district accountability; 703 KAR 5:130

MARRIAGE AND FAMILY THERAPISTS, STATE BOARD
Associate; 201 KAR 32.025
Continuing education requirements; 201 KAR 32:060
Definitions; 201 KAR 32:910

MASSAGE THERAPY, BOARD OF
Fees; 201 KAR 42.020

MEDICAID SERVICES
Payment and Services
Acquired brain injury services; 907 KAR 3:090
Community mental health center substance abuse services; 907 KAR 3:110
IMPACT Plus services, coverage, payments; 907 KAR 3:030
Physician services, reimbursement; 907 KAR 3:010
Telehealth services; reimbursement; 907 KAR 3:170

Services
Adults with chronic mental illness; targeted case management services, payments for; 907 KAR 1:520
Ambulance transportation; 907 KAR 1:080
Benefits, Title XIX, XVIII, coverage, payment; 907 KAR 1:008
Breast, cervical cancer, eligibility; 907 KAR 1:805
Community living services, payments for supports; 907 KAR 1:155
Community living services, supports for; 907 KAR 1:145
Dental services; 907 KAR 1:026
Dental services, reimbursement; 907 KAR 1:626
Drug reimbursement; 907 KAR 1:018
Estate recovery; 907 KAR 1:585
Home and community based waiver services; 907 KAR 1:160
Home and community based waiver services, reimbursement for; 907 KAR 1:170
Home health services, payments for; 907 KAR 1:031
Hospital services, reimbursement; 907 KAR 1:340
Hospital inpatient services, payments for; 907 KAR 1:013
Hospital outpatient services, payment for; 907 KAR 1:015
Income Standards; 907 KAR 1:640
Mental health center, payments for services; 907 KAR 1:045
Nursing facility, intermediate care facility, mentally retarded, developmentally disabled services; 907 KAR 1:022
Payments for early periodic screening, diagnosis, treatment, and special; 907 KAR 1:035
Preventive, remedial public health services; 907 KAR 1:360
Price-based nursing facility services, payments for; 907 KAR 1:065
Recipient cost-sharing; 907 KAR 1:604
Resource standards; 907 KAR 1:645
Selected therapies as ancillary services in nursing facilities, review and approval; 907 KAR 1:023
Severely emotionally disturbed children, targeted case management services, payments for; 907 KAR 1:530
Special income requirements, hospice, home community based services; 907 KAR 1:665
Spousal impoverishment, nursing facility requirements; 907 KAR 1:665
Technical eligibility requirements; 907 KAR 1:011
Trust, transferred resource requirements; 907 KAR 1:650

MEDICAL LICENSURE, BOARD OF
Expungement; 201 KAR 5.350

MENTAL HEALTH AND MENTAL RETARDATION SERVICES
Substance Abuse
Narcotic treatment programs; 908 KAR 1:340

MILITARY HERITAGE COMMISSION
(See Heritage Council)

MINES AND MINERALS
Oil and Gas
Gathering lines; 805 KAR 1:130

MINORITY AFFAIRS, OFFICE OF
Disadvantaged, minority, women business enterprises, certification; 600 KAR 4:010
Repealer; 600 KAR 4:021

MORTGAGE LOAN COMPANIES, BROKERS
(See Financial Institutions)

MOTOR CARRIERS
(See Vehicle Regulation)

MOTOR VEHICLE COMMISSION
Temporary off-site sale or display event; 605 KAR 1:060

MOTOR VEHICLE TAX
(See Vehicle Regulation)

MUSSEL SHELL HARVESTING
(See Fish and Wildlife Resources)

NAIL TECHNICIANS
(See Hairdressers and Cosmetologists)

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Environmental Protection
Air quality; 401 KAR Chapters 51 and 62
Environmental protection; 401 KAR Chapter 100
Solid waste facilities; 401 KAR Chapter 47
Water quality; 401 KAR Chapter 5
Surface mining reclamation, enforcement; 405 KAR Chapter 5

NURSING, BOARD OF
Applications, licensure, registration; 201 KAR 20:370
Continuing competency requirements; 201 KAR 20:215
Faculty for prelicensure registered nurse, practical nurse programs; 201 KAR 20:310
Foreign nursing schools, licensure of graduates; 201 KAR 20:480
Inactive nurse licensure status; 201 KAR 20:095
Licensure by endorsement; 201 KAR 20:110
Licensure by examination; 201 KAR 20:070
Nursing Incentive Scholarship Fund; 201 KAR 20:390
Prelicensure programs, organization, administration standards; 201 KAR 20:250
Practical nurse programs, prelicensure curriculum standards; 201 KAR 20:330
Registered nurse programs, prelicensure curriculum standards; 201 KAR 20:320
Reinstatement of license; 201 KAR 20:225
Sexual Assault Nurse Examiner Program, standards, credential requirements; 201 KAR 20:411

OCCUPATIONAL SAFETY, HEALTH (LABOR)
Air contaminants; 803 KAR 2:300
Exit routes, emergency action, fire prevention plans; 803 KAR 2:304
Fire protection; 803 KAR 2:311
Hazardous materials; 803 KAR 2:307
Recordkeeping, statistics; 803 KAR 2:180
Special industries; 803 KAR 2:317

OCCUPATIONAL THERAPY, BOARD OF
Continuing competence; 201 KAR 28:200
Deep physical agent modalities; 201 KAR 28:170
Definitions, abbreviations; 201 KAR 28:010
Examination; 201 KAR 28:370
SUBJECT INDEX

General provisions; 201 KAR 28:020
Licensure requirements; 201 KAR 28:060
Short-term practice, persons practicing under KRS 319A.090(1)(e); 201 KAR 28:030
Supervision of assistants, aides, students, temporary permit holders; 201 KAR 28:130
Repealer; 201 KAR 28:051, 201 KAR 28:121
Temporary permits; 201 KAR 28:180
Unprofessional conduct, code of ethics; 201 KAR 28:140

OIL AND GAS
(See Mines and Minerals)

OPTOMETRIC EXAMINERS, BOARD OF
Expungement; 201 KAR 5:100
Licensure application, endorsement; 201 KAR 5:010

OSTEOPATHIC MEDICINE SCHOLARSHIP PROGRAM
(See Higher Education Assistance Authority)

PHARMACY BOARD
Pharmacy services, hospitals, organized health care facilities; 201 KAR 2:074

PLUMBING
(See Housing, Buildings and Construction)

PREPAID TUITION PLAN (KAPT)
(See Higher Education Assistance Authority)
Kentucky Affordable Prepaid Tuition Plan; 11 KAR Chapter 17

PRIVATE INVESTIGATORS BOARD
Code of professional practice and conduct; 201 KAR 41:050
Examination; 201 KAR 41:030
Fees, 201 KAR 41:040

PROPRIETARY EDUCATION, BOARD OF
Commercial driver license training school
Application, school license; 201 KAR 40:050
Application, license renewal for school; 201 KAR 40:060
Complaint procedure against agents, schools, uncredentialed agents, uncredentialed schools; 201 KAR 40:090
Curriculum; 201 KAR 40:040
Facility standards; 201 KAR 40:100
Instructor, agent application, renewals; 201 KAR 40:070
Student records maintenance, student fee schedule, contracts, agreements involving licensed schools, advertising, solicitation of students by school; 201 KAR 40:080

PUBLIC HEALTH (HEALTH SERVICES)
Communicable Diseases
Immunization data reporting, exchange; 902 KAR 2:055
Food and Cosmetics
Body piercing; 902 KAR 45:070
Farmers markets; 902 KAR 45:090
Tattooing; 902 KAR 45:065
Health Services, Facilities
License procedures, fee schedule; 902 KAR 20:008
Previous license application denial or revocation; 902 KAR 20:014
Primary care center, operation, services; 902 KAR 20:058

PUBLIC PROTECTION
Alcoholic Beverage Control Board
Advertising distilled spirits and wine; 804 KAR Chapter 1
Financial Institutions
Check cashing; 808 KAR 9:040
Mortgage Loan Companies, Brokers; 808 KAR Chapter 12

Housing, Buildings and Construction
Electrical inspectors; 815 KAR Chapter 35
Insurance
Health insurance contracts; 806 KAR Chapter 17
Mines and Minerals
Oil and gas; 805 KAR Chapter 1

PURCHASING
Bidding, general, special conditions; 200 KAR 5:313
Capital construction, alternative project delivery methods; 200 KAR 5:380
Competitive sealed bidding; 200 KAR 5:306
Competitive sealed bidding, multistep; 200 KAR 5:370
Contract modifications; 200 KAR 5:311
Contract termination; 200 KAR 5:312
Contracts, competitively negotiated; 200 KAR 5:307
Cost principles; 200 KAR 5:317
Delegation of authority; 200 KAR 5:302
Disciplinary action, failure to perform; 200 KAR 5:315
Disclosure, contractor's financial records, information to certain governmental entities; 200 KAR 5:314
Kentucky-made wood products, consideration to use; 200 KAR 5:325
Legal documents; 200 KAR 5:015
Multiple contracts; 200 KAR 5:310
Noncompetitive negotiations; 220 KAR 5:309
Performance bonds, forms, payments; 200 KAR 5:305
Policies and procedures manual; 200 KAR 5:021
Recycled content, goods, supplies, equipment, material, printing with purchase of; 200 KAR 5:330
Repealer; 200 KAR 5:051
Set asides, small, minority business; 200 KAR 5:076

RACING COMMISSION
Thoroughbred racing; 810 KAR Chapter 1

RESPIRATORY CARE, BOARD OF
Continuing education requirements; 201 KAR 29:050

RETIREMENT
(Also see Teachers' Retirement)
Kentucky Employees Retirement System
Minimum duration; 105 KAR 1:380
Teachers' Retirement
General Rules
- Employment, retired members; 102 KAR 1:035
- Final average salary based on 3 highest salaries; 102 KAR 1:220
Optional benefits; 102 KAR 1:150

REVENUE
(See also Taxation)
Income Tax
Withholding; 103 KAR Chapter 18
Sales and Use Tax
Service and professional occupations; 103 KAR Chapter 26

ROBERT C BYRD HONORS SCHOLARSHIP PROGRAM
(See Higher Education Assistance Authority)

SALES AND USE TAX
(See Taxation)

SEXUAL ABUSE VICTIMS
(See Attorney General)

SEXUAL ASSAULT NURSE EXAMINER PROGRAM
(See Nursing, Board of)
STATE OWNED BUILDINGS, GROUNDS
Mansion monthly meal charges; 200 KAR 3:045

STATE POLICE
Candidate Selection
Appeals; 502 KAR 45:115
Disqualification; 502 KAR 45:025
Oral interview; 502 KAR 45:055
Criminal History Record Information System
Dissemination; 502 KAR 30:060
Driver Training
Commercial driver's license skill testing; 502 KAR 10:110
Operator's license skill testing; 502 KAR 10:100
Personnel
Repealer; 502 KAR 5:011
Traffic
Accident reports; 502 KAR 15:010

SUBSTANCE ABUSE
(See Mental Health and Mental Retardation Services)

SURFACE MINING RECLAMATION, ENFORCEMENT
Bonds, Insurance
Definitions; 405 KAR 10:001
Inspection, Enforcement
Definitions; 405 KAR 12:001
Permits
Definitions; 405 KAR 8:001
Provisions, General
Definitions; 405 KAR 7:001
Special Standards
Definitions; 405 KAR 20:001
Surface Effects of Noncoal Mining
Material handling; 405 KAR 5:060
Permit requirements; 405 KAR 5:030
Surface Mining Activities, Performance Standards
Definitions; 405 KAR 16:001
Underground Mining Activities, Performance Standards
Definitions; 405 KAR 18:001
Unsuitable Areas
Definitions; 405 KAR 24:001

TATTOOING
(See Public Health)

TAXATION
(See also Revenue)
Income, Withholding
Withholding statements; 103 KAR 18:050
Sales and Use Tax
Advertising agencies; 103 KAR 26:120

TEACHER SCHOLARSHIP LOAN PROGRAM
(See Higher Education Assistance Authority)

TEACHERS' RETIREMENT
(Also see Retirement)
General Rules; 102 KAR Chapter 1

TECHNICAL EDUCATION
Personnel system for certified, equivalent employees
School term, extent, duration; use of school days, extended employment; 780 KAR 3:080

THOROUGHBRED RACING
Entries, subscriptions, declarations; 810 KAR 1:027

TRAFFIC
(See Highways)

TRANSPORTATION
Highways
Traffic; 603 KAR Chapter 5
Minority Affairs; 600 KAR Chapter 4
Motor Vehicle Commission
Commission; 505 KAR Chapter 1
Vehicle Regulation
Commercial driver's license; 601 KAR Chapter 11
Driver's license; 601 KAR Chapter 12
Motor carriers; 601 KAR Chapter 1
Motor vehicle tax; 601 KAR Chapter 9

TREASURY
Postsecondary Education Prepaid Tuition Trust Fund
Repeal of 20 KAR Chapter 2; 20 KAR 2:011
State Treasury
Unclaimed properties
Accounts held, interest-bearing demand, savings, time deposit; 20 KAR 1:090
Claims; 20 KAR 1:040
Multiple claims; 20 KAR 1:100
Reports to be filed by holders; 20 KAR 1:080

UNCLAIMED PROPERTY
(See Treasury)

UNIVERSITIES
(See specific university)

VEHICLE REGULATION
Commercial Driver's License
Medical waivers, intrastate operators; 601 KAR 11:040
Repealer; 601 KAR 11:081
Driver's License
Instructional permit; 601 KAR 12:031
Motor Carriers
Safety; 601 KAR 1:005
Special overweight or overdimensional permits; 601 KAR 1:018
Motor Vehicle Tax
Apportioned registration; 601 KAR 9:135
Procedures for becoming a certified motor vehicle inspector; 601 KAR 9:085

VETERINARY EXAMINERS BOARD
Continuing education; 201 KAR 16:050
Fees; 201 KAR 16:015

VOTING
(See Elections, State Board)
Help America Vote Act 2002; 31 KAR Chapter 6
Statewide Voter Registration; 31 KAR Chapter 3

WASTE MANAGEMENT
Solid Waste Facilities
Environmental performance standards; 401 KAR 47:030

WATER
Quality
Antidegradation policy implementation methodology; 401 KAR 5:030
Definitions; 401 KAR 5:002
General provisions; 401 KAR 5:029
Permits to construct, modify, operate facility; 401 KAR 5:005
Surface waters standards; 401 KAR 5:031
Surface waters, designation, classification; 401 KAR 5:026

WATER PATROL
(See Fish and Wildlife Resources)

WESTERN KENTUCKY UNIVERSITY
Board of Regents
Capital construction procedures; 770 KAR 1:070
SUBJECT INDEX

WILDLIFE
(See Fish and Wildlife Resources)

WILDLIFE MANAGEMENT AREAS
(See Fish and Wildlife Resources)

WORK STUDY PROGRAM
(See Higher Education Assistance Authority)

WORKERS' CLAIMS
Adjustment of claims, procedures; 803 KAR 25:010
Attorney fee computation, retraining incentive benefits award, Interim attorney fee motions; 803 KAR 25:125
Insurance coverage filing, notice of policy change or termination; 803 KAR 25:175

WORKFORCE DEVELOPMENT
Employment Services
  Unemployment insurance; 787 KAR Chapter 1
Technical Education
  Personnel system for certified, equivalent employees; 780 KAR Chapter 3