ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 35, NUMBER 11
Friday, May 1, 2009

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The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet May 12, 2009 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages **2381-2383** of this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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Department for Community Based Services

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

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established 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 until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing 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, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

A transcript of the hearing is not required 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.

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, APRIL 15, 2009

STATEMENT OF EMERGENCY
105 KAR 1:130E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed amendment to the administrative regulation should be enacted on an emergency basis. This emergency amendment to the administrative regulation amends the current administrative regulation in accordance with the provisions of HB 1 enacted on June 27, 2008 during the 2008 Special Session of the General Assembly as interpreted by OAG 08-008. An emergency amendment to the administrative regulation is necessary for the Board of Trustees of Kentucky Retirement Systems to implement the new provisions of KRS 61.592, which were effective September 1, 2008. An ordinary amendment is not sufficient because the procedures for agencies certifying hazardous coverage for employees who become employed on or after September 1, 2008 must be established. This emergency amendment to the administrative regulation shall be replaced by an ordinary amendment to the administrative regulation. The ordinary amendment to the administrative regulation is identical to the emergency amendment to the administrative regulation. The ordinary amendment to the administrative regulation was filed with the Regulations Compiler simultaneously on April 15, 2009.

STEVEN L. BESHEAR, Governor
RANDY OVERSTREET, Chair

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Emergency Amendment)

105 KAR 1:130E. Hazardous duty coverage.

RELATES TO: KRS 61.592, 78.530, 78 545(31)
STATUTORY AUTHORITY: KRS 61 645(9)(e)
EFFECTIVE: April 15, 2009
NECESSITY, FUNCTION, AND CONFORMITY: KRS 61 645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16 505 to 16.652, 61 510 to 61.705, and 78.510 to 78 852 KRS 61 592(2) requires the board to promulgate administrative regulations prescribing the manner in which an employer shall request hazardous duty coverage for employees This administrative regulation establishes the procedures and forms for requesting hazardous position coverage. [~~The statute allows agencies participating in the Kentucky Retirement Systems to request hazardous position coverage for employees. This administrative regulation sets out the procedures and forms for requesting hazardous position coverage.~~]

Section 1. Definitions (1) "Department" is defined by KRS 61 510(3).
(2) "County" is defined by KRS 78 510(3).

Section 2. If a county eligible to participate in the County Employees Retirement System chooses to provide hazardous duty coverage to all eligible employees, the county shall adopt an appropriate order to pay the required contributions and provide hazardous coverage to all eligible employees. Notwithstanding the three (3) month trial period set out in [~~Section 2 of~~] 105 KAR 1:120, Section 2, the county's request for participation in County Employees Retirement System [~~CERS~~] shall be submitted to the Board of Trustees at the first quarterly meeting which occurs at least one (1) month after the adoption of the appropriate order. The effective date of hazardous position coverage in the order shall be the date of the county's participation in County Employees Retirement System.

Section 3 (1)[~~2.~~] A [~~county participating in the County Employees Retirement System or a~~] department participating in the Kentucky Employees Retirement System may provide hazardous position coverage upon authorization by the governing authority. The governing authority shall make the request for hazardous position coverage in writing to the Board of Trustees of Kentucky Retirement Systems If the position is approved,[-] the effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the board of trustees which occurs after the date of the request.

(2) A county participating in County Employees Retirement System may provide hazardous position coverage upon adoption of a resolution by its governing authority to transfer eligible positions from nonhazardous to hazardous position coverage The governing authority shall make a written request for hazardous position coverage to the Board of Trustees of Kentucky Retirement Systems. If the position is approved for hazardous coverage, the effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the Board of Trustees of Kentucky Retirement Systems in which the hazardous position coverage is approved unless a different date is approved by the Board of Trustees of Kentucky Retirement Systems.

(a)1. Employees who began participating in County Employees Retirement System prior to September 1, 2008 and were working in hazardous covered positions in County Employees Retirement System prior to September 1, 2008, shall continue to participate as hazardous covered employees as long as they remain in a position that has been approved for hazardous coverage

2 Employees who began participating in County Employees Retirement System prior to September 1, 2008 and are subsequently employed in hazardous covered positions, shall participate as hazardous covered employees as long as they remain in a position that has been approved for hazardous coverage

(b) Employees who begin participating in County Employees Retirement System on or after September 1, 2008 in a position that was approved for hazardous coverage prior to September 1, 2008, shall not be reported as hazardous covered employees until the county requests that the Board of Trustees of Kentucky Retirement Systems approve hazardous coverage for those positions that meet the criteria as set out in KRS 61.592(1)(b), and hazardous coverage is approved by the Board of Trustees of Kentucky Retirement Systems for those positions, even if the position has previously been approved for hazardous coverage.

Section 4. (1) [~~3.~~] The ~~county or~~] department shall complete and submit the Form 7013, HP-1, Hazardous Participation Certification (KERS) [~~dated July 1991, incorporated by reference~~]. The form shall be signed by the head of the [~~county or~~] department and by an individual who can attest that sufficient funds have been budgeted for the employer contributions. For departments of the Commonwealth of Kentucky, the department shall also submit a letter from the Governor's Office of Policy and Management verifying sufficient funds have been budgeted for employer contributions.

(2) The county shall complete and submit the "Form 7011, HP-1, Hazardous Participation Certification (CERS)". The form shall be signed by the agency head and by an individual who can attest that sufficient funds have been budgeted for the employer contributions

Section 5 [~~4.~~] The county or department shall submit a description of the duties of each position for which hazardous coverage is requested.

(1) The agency shall complete Sections 1 and 3 of Form 7025, Position Questionnaire, for employees of a department and for employees of a county whose participation date was prior to September 1, 2008.

(2) The agency shall complete Sections 2 and 3 of Form 7025, Position Questionnaire, for employees of a county whose participation date was on or after September 1, 2008.

Section 6 [~~5.~~] The county or department shall complete and submit a Form 2011 HP-2, Hazardous Position Certification [~~dated July 1991~~] provided by the retirement system for each employee in a position for which the coverage has been requested. If there is any change in the employee's work assignment or classification, the county or department shall submit a new Form 2011, HP-2,

Hazardous Position Certification, indicating the change in the position.

Section 7.[6.] If the county elects, pursuant to KRS 78.530(3)(a), (d) or (f), to pay the cost of providing hazardous coverage for current employees for past service in positions approved for hazardous coverage, the county shall request and pay for an actuarial study to determine the cost.

Section 8. Local government employers may be obligated by statutes outside KRS Chapter 61 to certify certain positions as hazardous.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form 2011, HP-2, Hazardous Position Certification," April 2009;

(b) "Form 7011, HP-1, Hazardous Participation Certification (CERS)", April 2009;

(c) "Form 7013, HP-1, Hazardous Participation Certification (KERS)", April 2009; and

(d) "Form 7025, Position Questionnaire", April 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the[~~7. The forms required by this administrative regulation are incorporated by reference and are available from~~] Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, Monday through Friday, [~~between the hours of~~] 8 a.m. and 4:30 p.m. [~~Monday through Friday.~~]

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: April 2, 2009

FILED WITH LRC: April 15, 2009 at 9 a m.

CONTACT PERSON: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800, extension 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedures for requesting hazardous duty coverage for eligible employees of a participating agency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out the procedures for requesting hazardous duty coverage for eligible employees of a participating agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.592 provides for hazardous duty coverage for employees who meet the definition of hazardous duty and whose agency has petitioned the board and received approval for hazardous duty retirement coverage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the procedures for an agency to request hazardous duty retirement coverage for its eligible employees.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides procedures to be followed for employees who begin participating in the County Employees Retirement System after September 1, 2008, and whose agency wishes to classify the position as hazardous duty for retirement purposes in accordance with statutory changes to KRS 61.592.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to statutory changes to KRS 61.592 effective September 1, 2008.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute KRS 61.592 provides for hazardous duty coverage for employees who meet the definition of hazardous duty and whose agency has petitioned and received approval from the board for hazardous duty retirement coverage. This amendment provides the procedures for agencies seeking hazardous duty coverage for employees who become employed on or after September 1, 2008.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing the procedures agencies seeking hazardous duty coverage for employees who become employed on or after September 1, 2008.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The individual or entity affected by this administrative regulation is the agency that will be seeking hazardous duty retirement coverage and the employees who will be working in those positions

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to comply with the procedures to request hazardous duty coverage.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies will be able to provide hazardous coverage for their employees who become employed on or after September 1, 2008.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if n3ew, or by the change if it is an amendment: There is no increase in funding or fees required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All agencies participating in one of the retirement systems administered by Kentucky Retirement Systems that wish to have its employees in hazardous covered positions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.592, 78.530, and 78.545(31).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures or revenue due to the administrative regulation; however, agencies will have to pay a higher contribution rate for hazardous duty employees if they choose to seek hazardous coverage for those employees.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no revenues generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenues generated.

(c) How much will it cost to administer this program for the first year? There will be no change in cost for participating agencies.

(d) How much will it cost to administer this program for subsequent years? There will be no change in cost for participating agencies.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of this administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

STATEMENT OF EMERGENCY
735 KAR 1:010E

The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) administers the Telecommunications Access Program (TAP) per KRS 163.525 and 163 527. KCDHH, as the administering body, promulgated administrative regulations at 735 KAR 1:010 pertaining to eligibility requirements, application, and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired. Per KRS 278.5499, the Public Service Commission (PSC) shall determine the appropriate funding mechanism for the TAP and shall collect reasonable necessary funds to administer the program. Effective June 1, 2009, per the PSC decision for Case No. 2007-00464, funds to support the TAP will be collected from wireless telecommunication providers as well as residential telephone providers. Per KRS 163.525, the TAP shall furnish specialized telecommunications equipment to deaf, hard of hearing, and speech impaired persons to provide equal access to telecommunication services through the telecommunications relay service. In order to meet this mandate, the KCDHH is expanding the TAP to include the distribution of wireless devices to serve this population. Before such distribution can begin the administrative regulations governing the program shall be amended. In order to match the mandated June 1, 2009 start date and ensure efficient use of the funds allocated to serve deaf, hard of hearing, and speech impaired consumers of the Commonwealth, this emergency amendment is being filed to permit distribution of wireless devices by the TAP. Wireless devices will be used by the TAP consumers to receive emergency warning notifications as well, and any delay in implementing this change in regulation could pose an imminent threat to human safety for this population. This emergency amendment will be replaced by an ordinary administrative regulation within the 180-day time frame; is identical, and is being filed simultaneously. A public hearing is not required for the emergency administrative regulation but will be scheduled for the ordinary administrative regulation and held if requested. Any comments received at the hearing or in writing will be considered for incorporation an addressed in our statement of consideration. The executive director and the chair of the board of the KCDHH have reviewed and authorized this amendment as filed.

STEVEN BESEAR, Governor
HELEN MOUNTJOY, Secretary
DR PATRICIA FREEMAN, Chair

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Commission on the Deaf and Hard of Hearing
(Emergency Amendment)

735 KAR 1:010E. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired.

RELATES TO: KRS 12.290, 61.878, 163.500-163.527, 334.010(9), 334.020, 29 U.S.C. 794, 42 U.S C. 12101
STATUTORY AUTHORITY: KRS 12.290, 163.525(5)
EFFECTIVE: April 7, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~12.290~~ requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf or hard-of-hearing. KRS 163.525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regulations to establish procedures for application for, and distribution of, specialized telecommunications equipment. This administrative regulation establishes eligibility criteria, requirements for application, and certification procedures.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification".

(3) "Audiologist" is defined at KRS 334A 020(5), and is limited to a person licensed by the board, as defined at KRS 334A.020(1).

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the Telecommunications Access Program staff.

(6) "Deaf" and "hard of hearing" are defined by KRS 163.500.

(7) "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(9) "Hearing instrument specialist" means "specialist in hearing instruments" as defined at KRS 334.010(9).

(10) "KCDHH" means the Kentucky Commission on Deaf and Hard of Hearing, as described at KRS 163.506.

(11) "Physician" means a person:

(a) With a medical degree;

(b) Licensed by the state in which he or she practices medicine; and

(c) Recognized, by the state Board of Medical Licensure in the state in which the physician [~~he or she~~] practices, as a specialist in:

1. Family practice;
2. General practice; or
3. Otolaryngology.

(12) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(13) "Specialized telecommunications equipment" or "STE" means readily-available or emerging adaptive equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications services, such as.

(a) Telecommunication devices for the deaf;
(b) Amplifiers;
(c) Voice carry over telephones;
(d) Captioned telephones;
(e) Visual, audible, or tactile ring signal devices; and
(f) Appropriate wireless devices.

(14) "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

(15) "Specialized telecommunications equipment" or "STE" is defined by KRS 163.525(1)(a).

(16) "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic air waves or hard wired methods,

(17) "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. General Applicant Criteria. (1) An applicant shall be:

(a) A person who has resided in Kentucky for one (1) year prior to the date of application, as demonstrated by one (1) or more of the following

1. Possession of a Kentucky driver's license;
2. Registered to vote in Kentucky;

3. Registered automobile in;

4. Filed Kentucky income tax return for the calendar year preceding the date of application;

5. Stationed in Kentucky on active military orders for at least one (1) year as a member of the Armed Forces, or his or her dependent, or

6. Enrolled as a student at an institution of higher learning located in Kentucky and meeting the residency requirements of 13 KAR 2:045;

(b) At least five (5) years of age and if the applicant is between five (5) and eighteen (18) years of age, the applicant's parents or guardians shall:

1. Apply on behalf of the child; and

2. Assume full responsibility for the equipment; and

(c) Deaf, hard of hearing or speech impaired such that the applicant cannot use the telephone for communication without adaptive specialized telecommunications equipment.

(2) An application shall be:

(a) Made on a "Telecommunications Access Program Application and Certification" form, incorporated by reference;

(b) Signed and submitted in person or by mail,

(c) Accompanied by:

1. A copy of a telephone bill showing telephone number and name and address of the person being billed for residential telephone customers;

2. A copy of the applicant's proof of residence;

3 Document of certification, as required by subsection (4) of this section.

(3) An applicant shall provide additional supporting documentation if requested by KCDHH.

(4) An applicant shall provide professional certification of the extent and permanence of the applicant's disability.

(a) Certification shall be at the applicant's expense

(b) Certification shall be performed and provided by:

1. A licensed physician;

2. A licensed audiologist;

3. A licensed speech-language pathologist;

4. A licensed hearing instrument specialist; or

5. A public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals, subject to approval by the KCDHH.

(5) Except for an individual receiving assistance from a program providing telephone services to persons normally unable to afford the services or an applicant for a wireless device, an applicant shall subscribe to or have currently applied for telephone service, including:

(a) Installation of a telephone line in the applicant's home, at the applicant's expense; and

(b) Payment of monthly telephone bills.

(6) Eligible applicants shall be awarded program participation on a first-come, first-serve basis, in accordance with the approved date, as determined by the dated signature of the Telecommunications Access Program staff. Eligible applicants shall be placed on a waiting list during times of fiscal constraint.

(7) KCDHH shall distribute the STE in compliance with:

(a) The Model Procurement Code, KRS Chapter 45A; and

(b) 735 KAR 1:020.

(8)[~~(7)~~] Not more than two (2) STEs one (1) of which shall be a visual, auditory, or tactile signaler, shall be distributed to a deaf, hard of hearing, or speech-impaired individual per telecommunications access line [~~for one (1) residential access line only~~].

Section 3. Application Process (1) The KCDHH staff shall provide assistance in completing forms if requested by an applicant.

(2) The Telecommunications Access Program staff shall review each application in the order the KCDHH office receives them, in order to determine if:

(a) All the necessary information is completed on the application;

(b) All required documentation is included; and

(c) All eligibility requirements are met.

(3) If the criteria in subsection 2 of this section are met, the application shall be approved, dated, and signed by the Telecommunications Access Program staff. The approved date shall determine the first-come, first-serve roster.

(4) The KCDHH shall, within sixty (60) days of receipt of the application, notify an applicant if the application has been approved or rejected.

(5) The KCDHH shall, within sixty (60) days of receipt of the application, provide to an ineligible applicant, written reasons for the determination of ineligibility. An applicant denied participation may reapply if, due to a change in conditions, the eligibility requirements as delineated in Section 2 of this administrative regulation are met.

(6) Training to properly select and use the STE shall be provided to applicants upon request.

Section 4. An application shall be denied if:

(1) The applicant does not meet the eligibility requirements as established in KRS 163.525, this administrative regulation or 735 KAR 1 020;

(2) The applicant has received STE from the Telecommunications Access Program within the preceding four (4) years;

(3) The applicant is an active consumer of the Office of Vocational Rehabilitation and receives a STE as part of an individual plan of employment, also know as an "IPE";

(4) The applicant has negligently or willfully damaged a STE previously received from the KCDHH's Telecommunications Access Program, or has violated another provision of the law governing the Telecommunications Access Program;

(5) The applicant fails to provide a police report of a stolen device or refuses to cooperate with the police investigation in the prosecution of the suspect, including the refusal to testify in court when subpoenaed to do so,

(6) A police report of a stolen device shows the applicant was negligent, for example by leaving the doors to the house or car unlocked or unattended;

(7) The applicant has lost or sold the STE; or

(8) In the case of replacing the equipment after four (4) years have passed, the original STE is found to be technologically up to date and functional by the KCDHH.

Section 5. Replacing the Specialized Telecommunications Equipment. During times of fiscal constraint a reapplication shall be accepted and held pending until funds become available. An applicant shall provide verification of eligibility at the time the reapplication is processed.

(1) A recipient may apply to replace the original STE if.

(a) The STE is damaged as a result of a natural disaster;

(b) There is a change in status, such as deteriorating vision or hearing;

(c) A new device has become available through the Telecommunications Access Program that is more appropriate to the recipient's disability than a device previously received through the program; or

(d) It has been four (4) years since the applicant last received STE.

(2) As funds are available, new STE to replace existing STE shall be issued to applicants who:

(a) Demonstrate eligibility; and

(b) Comply with the provisions of the administrative regulations governing the Telecommunications Access Program established in this administrative regulation and 735 KAR 1:020.

(3) Priority shall be given in the distribution of STE to first-time recipients during times of fiscal constraint.

(4) If a replacement is requested because the STE is damaged as a result of a natural disaster, the recipient shall first send the damaged equipment to the KCDHH, or directly to the vendor as directed by Telecommunications Access program staff.

(a) If necessary, the KCDHH shall send the damaged STE to the vendor for verification of unrepairable damage.

(b) If the vendor certifies to the KCDHH that the equipment provided to the recipient is unrepairable due to natural disaster, a replacement shall be issued to the recipient, upon reapplication, subject to:

1. Equipment availability;

2. Compliance with eligibility criteria established in this admin-

istrative regulation; and

3. The first-come, first-served provision; and

4. Availability of funds.

(5) If the recipient obtains certification from a physician, audiologist, hearing instrument specialist, or speech-language pathologist stating that the recipient will benefit from another device available through the KCDHH Telecommunications Access Program due to a change in disability status or a new device becoming available, then a replacement shall be issued to the applicant based on first-come, first-served and availability of funds. As an alternative, a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(6) If a replacement is requested due to the STE being stolen, then the recipient shall:

(a) Notify local police within thirty (30) days of the theft;

(b) Forward a copy of the police report to the KCDHH within ten (10) working days of the date the theft was reported; and

(c) Aid in the prosecution of the alleged perpetrator of the theft, if a suspect is identified.

(7) If a replacement is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.

(a) The KCDHH shall determine if the original STE is technologically obsolete or nonfunctional.

(b) If the original STE is:

1. Technologically obsolete or nonfunctional, then the recipient shall follow the application process to replace the equipment as delineated in this administrative regulation and 735 KAR 1:020; or

2. Not determined to be technologically obsolete or nonfunctional then the application for a replacement shall be denied and the original STE shall be returned to the recipient.

Section 6. Fraud. If a recipient obtained STE under false premises or through misrepresentation of facts on the application, the KCDHH shall demand return of the equipment immediately. Upon demand, the recipient shall return the STE and shall be ineligible to participate in the KCDHH Telecommunications Access Program thereafter.

Section 7. Confidentiality. All applicant and recipient information shall be kept confidential in compliance with the Open Records Law, KRS 61.878.

Section 8. Incorporation by Reference. (1) "Telecommunications Access Program Application and Certification", April 2009[~~December 2006~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the offices of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, Telephone 800-372-2907, V/TDD or (502) 573-2604 V/TDD, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky Commission on the Deaf and Hard of Hearing has reviewed this administrative regulation, prior to its filing with the Legislative Research Commission, as required by KRS 163.525(5).

DR. PATRICIA FREEMAN, Chair
LIZ HILL, Executive Director

APPROVED BY AGENCY: April 1, 2009

FILED WITH LRC: April 7, 2009 at noon

CONTACT PERSON: Rowena Holloway, Internal Policy Analyst III, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 (V/T), fax (502) 573-2604, email Row.holloway@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Liz Hill

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Telecommunication Access Program (TAP), administered by the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) was implemented in 1996 as a result of legislation enacted by the General Assembly in 1995. The TAP ensures equal access to telecommunications services by providing specialized telecommunications equipment (STE) to citizens of the Commonwealth who are deaf, hard of hearing, or speech impaired. This administrative regulation establishes the processing system for vendor participation in the TAP as well as outlining requirements for the security, maintenance and repair of the STE distributed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.525(5), which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute STE to any deaf, hard of hearing, or speech-impaired person qualified to receive the equipment at no additional cost beyond a single party telecommunication access line.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation confirms to the content of the authorizing statues by establishing the processing system for vendors, security, and the maintenance and repair of equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the processing requirements for vendors to distribute wireless telecommunication devices as well as outlining security, maintenance, and repair provisions of the system.

(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 will provide procedures for vendor participation in the distribution of wireless telecommunications devices through the TAP. The addition of wireless devices, such as pagers, to the distribution program will fulfill the unmet need of consumers for current technology necessary to access communications regardless of geographical location and will allow consumers to obtain prompt and accessible notification during disasters and weather related emergencies. The criteria for establishing and maintaining a vendor contract to distribute wireless devices is outlined in this amendment.

(b) The necessity of the amendment to this administrative regulation: Per KRS 278.548, the Public Service Commission (PSC) has authority to determine the appropriate funding mechanism for the TAP. As a result of a petition request from the KCDHH, the PSC issued an order (Case No. 2007-0464), which expanded the funding base for the TAP to include wireless telecommunication providers statewide. This amendment is necessary to incorporate procedures for acquiring a vendor to distribute wireless telecommunication devices through the TAP and sets the standards for security, maintenance, and repair of equipment purchased by the TAP. Program costs will increase as a result of the addition of wireless devices to the program, but are fully funded by a surcharge on all telecommunication access lines throughout the state. Current staff will be utilized to process the new applications for specialized equipment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will allow the governing body to establish procedures for vendors of wireless devices necessary to provide equitable access to telecommunications services and allow for establishment of procedures regarding security, maintenance and repair of specialized equipment.

(d) How the amendment will assist in the effective administration of the statutes: The Federal Telecommunications Act of 1996 was implemented to promote competition, reduce regulations, secure lower prices and higher quality services for telecommunications consumers and encourage the rapid deployment of new telecommunications technologies. The number of households with residential telephone lines has decreased dramatically over the last 4 years, not only in Kentucky but nationwide. Wireless subscribers have increased substantially and that trend is expected to continue as many consumers substitute wireless service for landline service to meet their communication needs. Wireless devices can be used to alert individuals with hearing loss to an emergency situation or an impending disaster. Without such a device, a large portion of

the 646,683 deaf and hard of hearing individuals in Kentucky may be unaware of impending danger and unable to respond during an emergency. Wireless devices can be utilized to communicate with first responders or emergency personnel on a one-to-one basis in situations where interpreters and captioning may not be available, to assist in providing equitable access as mandated by the Americans with Disabilities Act. To ensure that no legitimate need for telecommunication equipment goes unmet within the Commonwealth wireless devices must be distributed through the TAP. This amendment establishes a processing system for vendor participation, security and maintenance and repair of specialized equipment distributed to meet the needs of the citizens of the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Vendors who seek to do business with the Commonwealth are affected by this regulation. The TAP has had more than 12,000 applications since its implementation in 1995. There are 646,683 deaf, hard of hearing, or speech impaired consumers within the Commonwealth that could potentially be eligible to receive a wireless device through the TAP. Currently 6 vendors are partially supported by contract allocations to supply the equipment distributed by TAP and this amendment will add at least one additional vendor, potentially more. Individuals will benefit from the security, maintenance, and repair procedures outlined as requirements within this regulation. Organizations and state or local governments are not affected by this amendment, which pertains to specialized telecommunications equipment vendors.

(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: Vendors will profit from the sale of specialized equipment, as well as increase their consumer base, which in turn will boost a sagging economy. Consumers will benefit from requirements within this regulation regarding the security, maintenance, and repair of equipment distributed through the TAP.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Direct costs for the administrative operation of the TAP and procurement of specialized telecommunications equipment will be covered by the increase in restricted funds accrued from wireless providers after the June 1, 2009 effective date. There will be no additional cost pertaining to the selection of a vendor to distribute wireless devices, or the procedures utilized to secure, maintain and repair the purchased equipment.

(b) On a continuing basis: There will be no additional cost for implementing this regulation on an ongoing basis as vendor contracts for equipment are processed on a designated timeframe and the selected vendor for wireless equipment will be added to that contract rotation. Continued indirect costs include time spent by the Internal Policy Analyst III to monitor and amend vendor contracts, estimated to be five percent of the total job responsibilities.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The PSC has authority to modify the funding mechanism for TAP as set forth within KRS 163 525 and holds an agreement with the KCDHH outlining responsibilities of both parties. Per the directive of PSC case # 2007-00464, effective June 1, 2009, the TAP will receive 2 cents per telecommunications access line to support procurement of specialized equipment through June 30, 2010. Effective July 1, 2010, the TAP portion of the surcharge reverts to one cent per telecommunications access line. Program funds will be used to administer provisions of the vendor contracts as outlined in 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 fees are charged to maintain vendors within the TAP as the program accrues sufficient funds to support the amendments to this regulation. Therefore, this regulation change does not impact fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly established or increased by this amendment as the TAP is funded by a surcharge on telecommunication access lines. The PSC order actually reduced the overall surcharge from nine cents imposed on landlines only to the new amount effective June 1, 2009 of four cents per access line, both wired and wireless.

(9) TIERING: Is tiering applied? Tiering is applied in times of "fiscal constraint," which is defined as 75% of the TAP funds being disbursed or encumbered. Consumers who are deaf, hard of hearing, or speech impaired and have not previously received equipment are given first priority in times of fiscal constraint. If funds are available, consumers are permitted to reapply and receive new equipment once every 4 years. Vendors will be asked to provide a 2-year warranty on wireless devices, which supports the estimated life of the equipment, and 4 years on standard equipment, which typically continues to be functional past the warranty period. Vendors must comply with all requirements of the contract per KRS Chapter 45A, Kentucky Model Procurement Code

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) operates the Telecommunications Access Program (TAP) as mandated by KRS 163 525 and provides specialized telecommunications equipment (STE) to deaf, hard of hearing, or speech impaired consumers. Professional audiologists, speech pathologists, and hearing instrument specialists, as well as agencies and organizations statewide, which provide support services to this population, will be positively impacted by referring consumers to the TAP for assistive equipment at no cost to the agency or the consumer. State and local governments will be positively impacted in that consumers requesting services will be able to utilize wireless devices to more equitably access communication with state and local governments. This administrative regulation amendment will have no direct fiscal impact on these entities, other than KCDHH. All costs associated with the operation of the TAP will be covered by restricted funds allocated to the program from the collection of the surcharge.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky statues at KRS 163.510, 163.525, 163.527, 278.548, and 278.5499 and provisions of KRS Chapter 13A. Kentucky regulations at 735 KAR 1:010 and 1.020. Federal mandates at 47 U.S.C. 225 and 42 U.S.C. 12101, including provisions of the Americans with Disabilities Act (ADA) and Section 504 (29 U.S.C. 794) and Section 508 (29 U.S.C. 794d) of the Rehabilitation Act of 1973, as amended.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Both revenues and expenditures for the TAP will increase per the number of wireless access lines contributing to the two cent surcharge, which becomes effective June 1, 2009 as a result of a petition filed by KCDHH with the Public Service Commission (PSC). Effective June 30, 2010, the portion of the surcharge allocated to the TAP reverts back to one cent per access line per KRS 278.5499. The overall telecommunications surcharge will be reduced from the current 9 cents to 4 cents effective June 1, 2009, benefiting consumers' statewide and meeting requirements of Title IV of the ADA. No other state or local governments will be fiscally impacted by this regulation amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Based on the number of telecommunication access lines in Kentucky, it is estimated that the TAP will collect $750,000 during the first year while the 2 cents per access line is being allocated to the TAP.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Based on the number of telecommunication access lines in Kentucky, it is

estimated that the program will collect $375,000 during the subsequent years if the TAP portion of the surcharge reverts back to one cent per telecommunications access line.

(c) How much will it cost to administer this program for the first year? With the inclusion of wireless devices in the TAP, it is estimated the full $750,000 collected from the surcharge will be required to administer the program and purchase the commodities (equipment distributed) for the program's consumers.

(d) How much will it cost to administer this program for subsequent years? With the inclusion of wireless devices to the TAP and the anticipated need for this kind of specialized equipment, it is estimated the $375,000 collected from the surcharge will be insufficient to administer the program and purchase the commodities (equipment distributed) for the program's consumers. If this is confirmed after the first year of operation under this amended regulation, the KCDHH will request that the TAP allotment of the surcharge remain at the 2 cents per telecommunications access line collected during the first year of operation. If that request is granted, KRS 278.5499 will be amended accordingly.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation is mandated to comply with the Americans with Disabilities Act (ADA) of 1990 Pub.L. No. 101-336 (42 U.S.C. 12101) pursuant to Title IV of the ADA (47 U.S.C. 225), the Federal Communications Commission (FCC) regulations enforcing the Telecommunications Accessibility Enhancement Act of 1988, which established the relay service, and the Rehabilitation Act of 1973, Section 504 (29 U.S.C. 794) and Section 508 as amended (29 U.S.C. 794d).

2. State compliance standards. This administrative regulation was promulgated pursuant to KRS 163.525, mandating implementation of an equipment distribution program to ensure equitable access to telecommunications for the deaf, hard of hearing, and speech impaired as established pursuant to KRS 278.548. The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) functions under a memorandum of agreement with the Public Service Commission for coordination and oversight of funding and operations to meet the objectives of KRS 278.5499. Procedures for application and distribution of equipment are defined in 735 KAR 1:010 and 735 KAR 1:020, in accordance with provisions of KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. (42 U.S.C. 12101) provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities including enforceable standards addressing this discrimination. (47 U.S.C. 225) mandates provision of telecommunications relay services (TRS) every day, 24 hours a day. TRS is defined as telephone transmission service that provides the ability for an individual who has a hearing or speech disability to engage in communication by any means of telecommunications access with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate. (29 U.S.C. 794) states that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any executive agency or by the U.S. FCC. This includes removal of architectural, transportation or communication barriers and ensures that federal agencies provide accessibility to disabled individuals, in the development, procurement, maintenance, or use of electronic and information technology, unless an undue burden would be imposed on such an agency. In such case, an alternate means of accessing the data will be provided to the disabled individuals. (29 U.S.C. 794d) mandates new opportunities for people with disabilities to use telecommunications be made available and development of technologies that will help achieve accessibility are pursued. Agencies must give disabled members of the public access to information that is comparable to the access available to others.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements or additional or different responsibilities than mandated by federal requirements. Kentucky's Telecommunication Access Program (TAP) will better meet the needs of our deaf, hard of hearing and speech impaired consumers, by providing wireless technology. Collection of a surcharge on all telecommunications access lines throughout the Commonwealth will be sufficient to cover the costs incurred by the program, including procurement of equipment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

STATEMENT OF EMERGENCY
735 KAR 1:020E

The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) administers the Telecommunications Access Program (TAP) per KRS 163.525 and KRS 163.527. KCDHH as the administering body promulgated regulations 735 KAR 1:020 pertaining to the processing system for distributing equipment through TAP, which includes vendor participation, security, maintenance and repair. Per KRS 278.5499, the Public Service Commission (PSC) shall determine the appropriate funding mechanism for the TAP, and shall collect reasonable necessary funds to administer the program. Effective June 1, 2009, per the PSC decision for Case No. 2007-00464, funds to support the TAP will be collected from wireless telecommunication providers as well as residential telephone providers. Per KRS 163.525, the TAP must furnish specialized telecommunications equipment to deaf, hard of hearing, and speech impaired person to provide equal access to telecommunication services through the telecommunications relay service. In order to meet this mandate, the KCDHH is expanding the TAP to include the distribution of wireless devices to serve this population. Before such distribution can begin, or vendors selected to provide the equipment, the administrative regulations governing the program must be amended. In order to match the mandated June 1, 2009 start date and ensure efficient use of the funds allocated to serve deaf, hard of hearing, and speech impaired consumers of the Commonwealth, this emergency amendment is being filed to permit distribution of wireless devices by the TAP. Wireless devices will be used by the TAP consumers to receive emergency warning notifications as well, and any delay in implementing this change in regulation could pose an imminent threat to human safety for this population. This emergency administrative regulation will be replaced by an ordinary administrative regulation within the 180-day timeframe; is identical, and is being filed simultaneously. A public hearing is not required for the emergency regulation amendment but will be scheduled for the ordinary administrative regulation amendment and held if requested. Any comments received at the hearing or in writing will be considered for incorporation and addressed in our statement of consideration. The Executive Director and the Chair of the Board of the KCDHH have reviewed and authorized this regulation amendment as filed.

STEVEN BESHEAR, Governor
HELEN MOUNTJOY, Secretary
DR PATRICIA FREEMAN, Chair

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Commission on the Deaf and Hard of Hearing
(Emergency Amendment)

735 KAR 1:020E. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

RELATES TO. KRS 12.290, Chapter 45A, 61.878, 163.500-

163 527, 334.010(9), 334.020, 29 U.S.C. 794, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 12.290, 163.525(5)

EFFECTIVE: April 7, 2009

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf or hard of hearing. KRS 163 525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regulations to establish procedures for application for, and distribution of, telecommunications devices. This administrative regulation establishes procedures for specialized telecommunications equipment vendors, for security, and for maintenance and repair.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification".

(3) "Audiologist" is defined at KRS 334A.020(5), and is limited to a person licensed by the board, as defined at KRS 334A.020(1).

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the Telecommunications Access Program staff.

(6) "Deaf" and "hard of hearing" are defined by KRS 163 500.

(7) "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(9) "Hearing instrument specialist" means "specialist in hearing instruments" as defined at KRS 334.010(9).

(10) "KCDHH" means the Kentucky Commission on Deaf and Hard of Hearing, as described at KRS 163.506.

(11) "Physician" means a person:

(a) With a medical degree;

(b) Licensed by the state in which he or she practices medicine; and

(c) Recognized, by the state Board of Medical Licensure in the state in which the physician[~~he or she practices~~], as a specialist in:

1. Family practice;

2. General practice; or

3. Otolaryngology.

(12) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(13) "Specialized telecommunications equipment" or "STE" means readily-available or emerging adaptive equipment that enables deaf, hard of hearing or speech-impaired individuals to access telecommunications services, such as:

(a) Telecommunication devices for the deaf;

(b) Amplifiers;

(c) Voice carry over telephones;

(d) Captioned telephones,

(e) Visual, audible, or tactile ring signal devices; and

(f) Wireless devices.

(14) "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

(15) "Specialized Telecommunications Equipment" or "STE" is defined by KRS 163.525(1)(a)

(16) "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic air waves or hard wired methods

(17) "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. Processing System. (1) The KCDHH shall use accounting procedures consistent with Commonwealth accounting practices in compliance with applicable sections of the Model Procurement Code, KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with applicable provisions of the Model Procurement Code, KRS Chapter 45A, and shall be applied uniformly to applicants and vendors.

(3) The KCDHH Telecommunications Access Program accounts shall be audited on a regular basis by the Auditor of Public Accounts.

Section 3. Vendor and Recipient Participation (1) The vendor shall be responsible for complying with the provisions of the Model Procurement Code, as established in the contract between the vendor and KCDHH. The vendor shall:

(a) Mail or otherwise deliver the STE directly to the recipient's Kentucky residence; and

(b) Send the following to the KCDHH:

1. An itemized invoice with the recipient's name and STE model and serial number; and

2. A copy of the delivery receipt for the STE sent to the recipient.

(2) The vendor, in exchange for an itemized invoice and a copy of the delivery receipt, shall be paid by the KCDHH or a bank, pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(3) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.

(4) Ownership rights and responsibilities for the STE shall belong to the recipient, as evidenced by the recipient's copy of the delivery receipt. Equipment obtained under this program shall not be sold, loaned, or otherwise transferred out of the possession of the originally-authorized recipient. Any [~~An~~] person who attempts to sell or who knowingly purchases stolen equipment shall be prosecuted to the fullest extent of the law.

(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment during the four (4) [~~five (5)~~] year warranty period. In order to have a malfunctioning STE repaired, the recipient shall:

1. Contact the KCDHH; and

2. Comply with the repair and maintenance procedures established in Section 5 of this administrative regulation.

(b) Each recipient shall:

1 [~~Purchase or lease a telephone;~~

~~2.~~] Assume responsibility for monthly maintenance of the telecommunications access line as described in 735 KAR 1:010; [~~Pay each monthly telephone bill~~]

3. Purchase batteries and paper for the STE[~~Specialized Telecommunications Equipment~~]; and

4. Pay for other general costs and supplies associated with the functions and use of the STE.

(c) A recipient shall be responsible for the loss of an STE received under the auspices of the KCDHH Telecommunications Access Program.

Section 4. Security. (1) The recipient shall notify the KCDHH within ten (10) working days if the equipment is lost or damaged.

(2) If the equipment is stolen, the recipient shall:

(a) Notify local police within thirty (30) days of the theft;

(b) Forward a copy of the police report to the KCDHH within ten (10) working days of the date the theft was reported; and

(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

Section 5. Maintenance and Repair Procedures. (1) A recipient shall report equipment in need of repair to the KCDHH. Telecommunications Access Program staff shall inform the recipient of:

(a) The mailing address and telephone number of the manufacturer; and

(b) The purchase order number for the equipment.

(2) The recipient shall:

(a) Report the problem to the manufacturer;

(b) Ask that the manufacturer pay for shipping the defective equipment:

1. To the manufacturer's designated place of repair; and
2. Back to the recipient, once repaired.

(3) The contracted repair agent shall notify the recipient that the STE is repaired, or is not repairable, and shall provide verification of the transaction to the KCDHH. If the warranty period has ended, the recipient shall assume financial responsibility for repair of the equipment.

(4) A recipient shall notify the KCDHH immediately of a change of residential address.

This is to certify that the Chair of the Kentucky Commission on the Deaf and Hard of Hearing has reviewed this administrative regulation, prior to its filing with the Legislative Research Commission, as required by KRS 163.525(5)

DR. PATRICIA FREEMAN, Chair
LIZ HILL, Executive Director
APPROVED BY AGENCY: April 1, 2009
FILED WITH LRC: April 7, 2009 at noon
CONTACT PERSON. Rowena Holloway, Internal Policy Analyst III, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 (V/T), fax (502) 573-2604, email Row holloway@ky gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Liz Hill

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Telecommunication Access Program (TAP), administered by the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) was implemented in 1996 as a result of legislation enacted by the General Assembly in 1995. The TAP ensures equal access to telecommunications services by providing specialized telecommunications equipment (STE) to citizens of the Commonwealth who are deaf, hard of hearing, or speech impaired. This administrative regulation establishes the processing system for vendor participation in the TAP as well as outlining requirements for the security, maintenance and repair of the STE distributed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.525(5), which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute STE to any deaf, hard of hearing, or speech-impaired person qualified to receive the equipment at no additional cost beyond a single party telecommunication access line.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation confirms to the content of the authorizing statues by establishing the processing system for vendors, security, and the maintenance and repair of equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the processing requirements for vendors to distribute wireless telecommunication devices as well as outlining security, maintenance, and repair provisions of the system.

(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 will provide procedures for vendor participation in the distribution of wireless telecommunications devices through the TAP. The addition of wireless devices, such as pagers, to the distribution program will fulfill the unmet need of consumers for current technology necessary to access communications regardless of geographical location and will allow consumers to obtain prompt and accessible notification during disasters and weather related emergencies. The criteria for establishing and maintaining a vendor contract to distribute wireless devices is outlined in this amendment.

(b) The necessity of the amendment to this administrative regulation: Per KRS 278.548, the Public Service Commission (PSC) has authority to determine the appropriate funding mechanism for the TAP. As a result of a petition request from the KCDHH, the PSC issued an order (Case No. 2007-0464), which expanded the funding base for the TAP to include wireless telecommunication providers statewide. This amendment is necessary to incorporate procedures for acquiring a vendor to distribute wireless telecommunication devices through the TAP and sets the standards for security, maintenance, and repair of equipment purchased by the TAP. Program costs will increase as a result of the addition of wireless devices to the program, but are fully funded by a surcharge on all telecommunication access lines throughout the state. Current staff will be utilized to process the new applications for specialized equipment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will allow the governing body to establish procedures for vendors of wireless devices necessary to provide equitable access to telecommunications services and allow for establishment of procedures regarding security, maintenance and repair of specialized equipment.

(d) How the amendment will assist in the effective administration of the statutes: The Federal Telecommunications Act of 1996 was implemented to promote competition, reduce regulations, secure lower prices and higher quality services for telecommunications consumers and encourage the rapid deployment of new telecommunications technologies. The number of households with residential telephone lines has decreased dramatically over the last 4 years, not only in Kentucky but nationwide. Wireless subscribers have increased substantially and that trend is expected to continue as many consumers substitute wireless service for landline service to meet their communication needs. Wireless devices can be used to alert individuals with hearing loss to an emergency situation or an impending disaster Without such a device, a large portion of the 646,683 deaf and hard of hearing individuals in Kentucky may be unaware of impending danger and unable to respond during an emergency. Wireless devices can be utilized to communicate with first responders or emergency personnel on a one-to-one basis in situations where interpreters and captioning may not be available, to assist in providing equitable access as mandated by the Americans with Disabilities Act. To ensure that no legitimate need for telecommunication equipment goes unmet within the Commonwealth wireless devices must be distributed through the TAP. This amendment establishes a processing system for vendor participation, security and maintenance and repair of specialized equipment distributed to meet the needs of the citizens of the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Vendors who seek to do business with the Commonwealth are affected by this regulation. The TAP has had more than 12,000 applications since its implementation in 1995. There are 646,683 deaf, hard of hearing, or speech impaired consumers within the Commonwealth that could potentially be eligible to receive a wireless device through the TAP. Currently 6 vendors are partially supported by contract allocations to supply the equipment distributed by TAP and this amendment will add at least one additional vendor, potentially more. Individuals will benefit from the security, maintenance, and repair procedures outlined as requirements within this regulation. Organizations and state or local governments are not affected by this amendment, which pertains to specialized telecommunications equipment vendors.

(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: Vendors will profit from the sale of specialized equipment, as well as increase their consumer base, which in turn will boost a sagging economy. Consumers will benefit from requirements within this regulation regarding the security, maintenance, and repair of equipment distributed through the TAP.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Direct costs for the administrative operation of the TAP and procurement of specialized telecommunications equipment will be covered by the increase in restricted funds accrued from wireless providers after the June 1, 2009 effective date. There will be no additional cost pertaining to the selection of a vendor to distribute wireless devices, or the procedures utilized to secure, maintain and repair the purchased equipment.

(b) On a continuing basis: There will be no additional cost for implementing this regulation on an ongoing basis as vendor contracts for equipment are processed on a designated timeframe and the selected vendor for wireless equipment will be added to that contract rotation. Continued indirect costs include time spent by the Internal Policy Analyst III to monitor and amend vendor contracts, estimated to be five percent of the total job responsibilities.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The PSC has authority to modify the funding mechanism for TAP as set forth within KRS 163.525 and holds an agreement with the KCDHH outlining responsibilities of both parties. Per the directive of PSC case # 2007-00464, effective June 1, 2009, the TAP will receive 2 cents per telecommunications access line to support procurement of specialized equipment through June 30, 2010. Effective July 1, 2010, the TAP portion of the surcharge reverts to one cent per telecommunications access line. Program funds will be used to administer provisions of the vendor contracts as outlined in 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 fees are charged to maintain vendors within the TAP as the program accrues sufficient funds to support the amendments to this regulation. Therefore, this regulation change does not impact fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly established or increased by this amendment as the TAP is funded by a surcharge on telecommunication access lines. The PSC order actually reduced the overall surcharge from nine cents imposed on landlines only to the new amount effective June 1, 2009 of four cents per access line, both wired and wireless.

(9) TIERING: Is tiering applied? Tiering is applied in times of "fiscal constraint", which is defined as 75%of the TAP funds being disbursed or encumbered. Consumers who are deaf, hard of hearing, or speech impaired and have not previously received equipment are given first priority in times of fiscal constraint. If funds are available, consumers are permitted to reapply and receive new equipment once every 4 years. Vendors will be asked to provide a 2-year warranty on wireless devices, which supports the estimated life of the equipment, and 4 years on standard equipment, which typically continues to be functional past the warranty period. Vendors must comply with all requirements of the contract per KRS Chapter 45A, Kentucky Model Procurement Code.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) operates the Telecommunications Access Program (TAP) as mandated by KRS 163.525 and provides specialized telecommunications equipment (STE) to deaf, hard of hearing, or speech impaired consumers. Professional audiologists, speech pathologists, and hearing instrument specialists, as well as agencies and organizations statewide, which provide support services to this population, will be positively impacted by referring consumers to the TAP for assistive equipment at no cost to the agency or the consumer. State and local governments will be positively impacted in that consumers requesting services will be able to utilize wireless devices to more equitably access communication with state and local governments. This administrative regulation amendment will have no direct fiscal impact on these entities, other than KCDHH. All costs associated with the operation of the TAP will be covered by restricted funds allocated to the program from the collection of the surcharge.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky statues at KRS 163.510, 163.525, 163.527, 278.548, and 278.5499 and provisions of KRS Chapter 13A. Kentucky regulations at 735 KAR 1.010 and 1 020. Federal mandates at 47 U.S.C. 225 and 42 U.S.C. 12101, including provisions of the Americans with Disabilities Act (ADA) and Section 504 (29 U.S.C. 794) and Section 508 (29 U.S C. 794d) of the Rehabilitation Act of 1973, as amended.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Both revenues and expenditures for the TAP will increase per the number of wireless access lines contributing to the two cent surcharge, which becomes effective June 1, 2009 as a result of a petition filed by KCDHH with the Public Service Commission (PSC). Effective June 30, 2010, the portion of the surcharge allocated to the TAP reverts back to one cent per access line per KRS 278.5499. The overall telecommunications surcharge will be reduced from the current 9 cents to 4 cents effective June 1, 2009, benefiting consumers' statewide and meeting requirements of Title IV of the ADA. No other state or local governments will be fiscally impacted by this regulation amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Based on the number of telecommunication access lines in Kentucky, it is estimated that the TAP will collect $750,000 during the first year while the 2 cents per access line is being allocated to the TAP.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Based on the number of telecommunication access lines in Kentucky, it is estimated that the program will collect $375,000 during the subsequent years if the TAP portion of the surcharge reverts back to one cent per telecommunications access line.

(c) How much will it cost to administer this program for the first year? With the inclusion of wireless devices in the TAP, it is estimated the full $750,000 collected from the surcharge will be required to administer the program and purchase the commodities (equipment distributed) for the program's consumers.

(d) How much will it cost to administer this program for subsequent years? With the inclusion of wireless devices to the TAP and the anticipated need for this kind of specialized equipment, it is estimated the $375,000 collected from the surcharge will be insufficient to administer the program and purchase the commodities (equipment distributed) for the program's consumers. If this is confirmed after the first year of operation under this amended regulation, the KCDHH will request that the TAP allotment of the surcharge remain at the 2 cents per telecommunications access line collected during the first year of operation. If that request is granted, KRS 278.5499 will be amended accordingly.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation is mandated to comply with the Americans with Disabilities Act (ADA) of 1990 Pub.L. No. 101-336 (42 U.S C. 12101) pursuant to Title IV of the ADA (47 U.S.C. 225), the Federal Communications Commission (FCC) regulations enforcing the Telecommunications Accessibility Enhancement Act of 1988, which established the relay service, and the Rehabilitation Act of 1973, Section 504 (29 U.S.C. 794) and Section 508 as amended (29 U.S.C. 794d).

2. State compliance standards. This administrative regulation was promulgated pursuant to KRS 163.525, mandating implementation of an equipment distribution program to ensure equitable access to telecommunications for the deaf, hard of hearing, and speech impaired as established pursuant to KRS 278 548. The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) functions under a memorandum of agreement with the Public Ser-

vice Commission for coordination and oversight of funding and operations to meet the objectives of KRS 278.5499. Procedures for application and distribution of equipment are defined in 735 KAR 1:010 and 735 KAR 1:020, in accordance with provisions of KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. (42 U.S.C. 12101) provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities including enforceable standards addressing this discrimination (47 U.S C. 225) mandates provision of telecommunications relay services (TRS) every day, 24 hours a day. TRS is defined as telephone transmission service that provides the ability for an individual who has a hearing or speech disability to engage in communication by any means of telecommunications access with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate. (29 U.S.C. 794) states that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any executive agency or by the U.S. FCC. This includes removal of architectural, transportation or communication barriers and ensures that federal agencies provide accessibility to disabled individuals, in the development, procurement, maintenance, or use of electronic and information technology, unless an undue burden would be imposed on such an agency. In such case, an alternate means of accessing the data will be provided to the disabled individuals. (29 U.S C. 794d) mandates new opportunities for people with disabilities to use telecommunications be made available and development of technologies that will help achieve accessibility are pursued. Agencies must give disabled members of the public access to information that is comparable to the access available to others.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements or additional or different responsibilities than mandated by federal requirements. Kentucky's Telecommunication Access Program (TAP) will better meet the needs of our deaf, hard of hearing and speech impaired consumers, by providing wireless technology. Collection of a surcharge on all telecommunications access lines throughout the Commonwealth will be sufficient to cover the costs incurred by the program, including procurement of equipment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

STATEMENT OF EMERGENCY
806 KAR 18:090E

This emergency administrative regulation is necessary to provide an extended election period for continuation of a group policy under state law in accordance with the American Recovery and Reinvestment Act of 2009. The federal law affords an extended opportunity for certain individuals, whose employment has been involuntarily terminated from September 1, 2008 through February 17, 2009, to elect continuation coverage and, in doing so, be eligible for premium assistance through the federal government. The extended election period began on February 17, 2009 and ends sixty (60) days after the plan administrator provides a required notice. Plan administrators are required to provide the required notice within sixty (60) days from February 17, 2009 (or April 18, 2009) The U. S. Department of Labor has stated that the premium assistance provisions will extend to individuals covered under state continuation coverage. However, the extended election period will not apply to individuals eligible for state continuation coverage unless states act to extend that election period Therefore, due to the short federal deadline for providing notice of the extended election for continuation coverage and subsequently electing continuation coverage, it is necessary to implement these state requirements immediately. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation because the extended election period afforded under this emergency administrative regulation will expire June 17, 2009.

STEVEN L. BESHEAR, Governor
ROBERT D. VANCE, Secretary
SHARON P. CLARK, Commissioner

PUBLIC PROTECTION CABINET
Department of Insurance
Health Insurance Policy and Managed Care Division
(New Emergency Administrative Regulation)

806 KAR 18:090E. Notice of extension of election period for continuation of a group policy.

RELATES TO. KRS 304.18-110, Pub L. 111-5, February 17, 2009, 123 Stat. 115

STATUTORY AUTHORITY: KRS 304.2-110

EFFECTIVE: March 13, 2009

NECESSITY, FUNCTION, AND CONFORMITY: EO 2008-507, signed June 6, 2008 and effective June 16, 2008, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for, or as an aid to the effectuation of, any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. This administrative regulation establishes an extension of the election period for a continued group policy for persons eligible for premium assistance under the American Recovery and Reinvestment Act of 2009, Pub.L. 111-5, 123 Stat. 115.

Section 1. Definitions. (1) "Group policy" is defined in KRS 304.18-110(1)(a).

(2) "Qualified beneficiary" means a person who·

(a) Is entitled to continue a group policy pursuant to KRS 304.18-110(2) due to involuntary termination of the group member's employment between September 1, 2008 and February 17, 2009; and

(b) Did not have a continued group policy in effect on February 17, 2009.

Section 2. (1) An insurer shall provide notice of the right to continue a group policy to a qualified beneficiary in accordance with Pub L. 111-5, sec. 3001(a)(7).

(2) A qualified beneficiary shall:

(a) Have the right to continue a group policy in accordance with Pub L. 111-5, sec. 3001(a)(4); and

(b) If desired, make an election to continue a group policy in accordance with KRS 304.18-110(2)(b).

SHARON P. CLARK, Commissioner
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 13, 2009

FILED WITH LRC: March 13, 2009 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD NOTICE: A public hearing on this administrative regulation shall be held on May 26, 2009 at 9 a m , EST, at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2008, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 June 1, 2009. 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: DJ Wasson, Staff Assistant, Kentucky Department of Insurance, PO Box 517, Frankfort, Kentucky 40602,

phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of.

(a) What this administrative regulation does This administrative regulation establishes a special election period for individuals entitled to state continuation coverage from September 1, 2008 through February 17, 2009, that mirrors the special election period for COBRA continuation coverage under the American Recovery and Reinvestment Act of 2009.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to afford certain Kentuckians who are not eligible for COBRA continuation coverage an opportunity for a special election period for state continuation coverage for the purpose of obtaining the premium assistance given under the American Recovery and Reinvestment Act of 2009.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Executive Director of Insurance to promulgate administrative regulations necessary for, or as an aid to the effectuation of, any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010. This administrative regulation clarifies the right to continue a group health insurance policy in accordance with KRS 304.18-110.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation will allow individuals involuntarily terminated from their employment from September 1, 2008 through February 17, 2009, another opportunity to elect a continued group health insurance policy. If elected, the individual will be eligible for premium assistance in accordance with the American Recovery and Reinvestment Act of 2009.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 860 insurance companies that hold a certificate of authority in Kentucky to offer health insurance in Kentucky. This regulation will also impact an unknown number of individuals who will be afforded another opportunity to elect continuation of their group health policy.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Insurers will be required to send a notice to individuals who were entitled to continue their group health insurance policy and whose employment involuntarily terminated between September 1, 2008 and February 17, 2009, of the right to elect continuation of their group health insurance policy in accordance with the requirements for notice of the special election period for COBRA continuation coverage in the American Recovery and Reinvestment Act of 2009.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). In that the number of individuals who will receive a notice is undetermined at this time, the cost of mailing the notices required by this administrative regulation is unknown.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, certain Kentuckians will be able to take advantage of the federal premium assistance available to those insured through COBRA continuation coverage.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will not be an initial cost to implement this regulation.

(b) On a continuing basis: There will not be a continued cost to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Department of Insurance will be used for 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: An increase in fees or funding will not be needed to implement this administrative regulation

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees This administrative regulation does not establish any specific fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will be revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will be revenue neutral.

(c) How much will it cost to administer this program for the first year? There will not be a cost to administer this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will not be a cost to administer this administrative regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: The federal statute requiring promulgation of this administrative regulation is Pub.L. 111-5, the American Recovery and Reinvestment Act of 2009.

2. State compliance standards. The federal American Recovery and Reinvestment Act of 2009 includes provisions allowing individuals involuntarily terminated from September 1, 2008 through February 17, 2009 who did not elect continuation coverage when it was first offered or who did elect continuation coverage but are no longer enrolled have a new election opportunity. The Centers for Medicare and Medicaid Services, the U. S. Department of Labor and the U. S. Treasury Department have taken the position that states must act to extend the election period to state continuation coverage. If individuals elect state continuation coverage un-

der this extended election period, they will be eligible to receive premium assistance under the American Recovery and Reinvestment Act of 2009.

3. Minimum or uniform standards contained in the federal mandate. Individuals who were entitled to continuation coverage due to involuntary termination of their employment from September 1, 2008 through February 17, 2009, who did not elect continuation coverage or who are no longer enrolled in continuation coverage, will have an extended opportunity to elect continuation coverage. The election period begins February 17, 2009 and ends sixty (60) days after the plan administrator provides notice of the extended election period.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will not impose stricter requirements than those required by the federal mandate.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, April 14, 2009)

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky.

RELATES TO: KRS 156 160, 164.001, 164 011, 164.020(3), (5), (8), 164 030

STATUTORY AUTHORITY: KRS 164 020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the council to set the minimum qualifications for admission to the state-supported postsecondary education institutions. It is the intent of the council that all students have available to them an opportunity for postsecondary education appropriate to their interests and abilities This administrative regulation establishes the minimum qualifications related to admission at state-supported postsecondary education institutions. The college readiness standards established in this administrative regulation shall not release institutions from the requirements contained in 13 KAR 2.060, degree program approval; equal opportunity goals.

Section 1. Definitions. (1) "Adult student" means a student who is twenty-one (21) years of age or older.

(2) "Council" is defined by KRS 164.001(8)[~~164.001(7)~~].

(3) "Developmental course" means a college or university class or section that prepares a student for college-level study and does not award credit toward a degree.

(4) "Institution" or "institutions" means a state-supported postsecondary education institution as defined in KRS 164.001(12)[~~164 001(11)~~].

(5) "KCTCS" means the Kentucky Community and Technical College System as defined in KRS 164.001(13)[~~164 001(11)~~].

(6) "Systemwide[~~System-wide~~] standard" means an ACT Assessment sub-score of eighteen (18) in English, nineteen (19) in mathematics, or twenty (20)[~~twenty-one (21)~~] in reading.

Section 2. Minimum Qualifications for Institutional Admission as First-time Students. (1)(a) Except as provided by paragraph (b) of this subsection, an applicant seeking to enter a community and technical college shall have fulfilled the minimum requirements for admission to a degree program established by the Kentucky Community and Technical College System consistent with this administrative regulation if the applicant has:

1. Graduated from a public high school or a certified nonpublic high school; or

2 Earned a high school general equivalency diploma[~~certificate~~] (GED).

(b) The Kentucky Community and Technical College System may choose to exempt students who are eligible to pursue a GED from the requirements of paragraph (a) of this subsection if the KCTCS publishes the exemption policy in the student catalog.

(c) An applicant to a community-college type program at a university shall: [~~take the ACT Assessment.~~]

1. Satisfy[~~Have satisfied~~] the minimum requirements for admission to a two (2) year degree program established by the admitting institution consistent with this administrative regulation; and

2. Take the ACT Assessment.

(2)(a) Except as provided in paragraph (b) of this subsection, an applicant shall have fulfilled the minimum requirements for admission to a baccalaureate program at a university if the applicant has:

1. Graduated from a public high school or a certified nonpublic high school;

2. Completed the precollege curriculum established in Section 3 of this administrative regulation; and

3. Taken the ACT Assessment.

(b) An applicant who has earned a high school general equivalency diploma[~~certificate~~] (GED) or who is a graduate of a noncertified nonpublic high school, including a home school, may be admitted to a baccalaureate program at a university by taking the ACT Assessment and by scoring at levels established by the[a] university

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, a university may substitute the SAT for the ACT Assessment. The ACT RESIDUAL, ASSET Testing Program, COMPASS Testing Program, or ACCUPLACER Testing Program may be substituted for the ACT Assessment requirement for an adult student.

(4) An institution shall establish a written policy for admitting a student if an applicant has attended a noncertified or nonpublic high school and completed a course of study. Noncertified nonpublic schools shall include a home school.

(5) A nonresident seeking admission to a baccalaureate degree program at a university shall complete:

(a) The ACT recommended college core courses for the precollege curriculum which are[is] listed in the Benefits of a High School Core Curriculum, ACT 2006; or

(b) A college preparatory curriculum comparable to Kentucky's precollege curriculum established in Section 3 of this administrative regulation.

(6)(a) A university may, under extenuating circumstances, admit a student who has not met the testing requirements of subsection (2)(a)3 of this section if the university has a written policy defining extenuating circumstances.

(b) If a university admits a student under paragraph (a) of this subsection, the student shall satisfy the provisions of subsection (2)(a)3 of this section during the first semester of enrollment.

(7) A university may establish, in writing, additional admission criteria to supplement these minimum requirements.

Section 3. Precollege Curriculum. (1) An applicant to a baccalaureate degree program at an institution shall complete twenty-two (22) or more approved high school units including the following courses in the precollege curriculum. The precollege curriculum established in this section shall include the following categories and courses of study:

(a) Four (4) units of high school study in English/language arts, specifically including English I, English II, English III, and English IV or AP English;[-][,]

(b) Except as provided in subparagraphs 1, 2, and 3 of this paragraph, three (3) units of high school study in mathematics, including Algebra I, Algebra II, and Geometry.

1. An integrated, applied, interdisciplinary, or technical/occupational course may be substituted for a traditional Algebra I, Geometry, or Algebra II course if the course meets the appropriate content standards described in the Program of Studies, which is incorporated by reference in 704 KAR 3.303;[-]

2. A mathematics course whose content is more rigorous than Algebra I shall be accepted as a substitute for Algebra I.

3. An Algebra I course [~~may be~~] taken prior to high school [~~and~~] shall be counted as a required mathematics course if the academic content of the course is at least as rigorous as the appropriate high school algebraic thinking standards outlined in the Program of Studies, which is incorporated by reference in 704 KAR 3:303;[-]

(c) Three (3) units of high school study in science, to include physical science, life science, and earth and space science. At least one (1) unit shall be a laboratory course;[-][,]

(d) Three (3) units of high school study in social studies, from the following content areas: United States history, economics, government, world geography, and world civilization;

(e) One-half (1/2) unit in health education;[-][,]

(f) One-half (1/2) unit in physical education;[-][,]

(g) One (1) unit in history and appreciation of visual and performing arts; and[-][~~, and~~]

(h) Two (2) units in the same foreign language unless:

1. The applicant's local school has diagnosed the student as having a learning disability as set forth in KRS 157.200 and [~~707 KAR 1:280 or~~] 707 KAR 1:310; and

2. Either:

a. The school has[~~bus~~] determined that the learning disability precludes the student from successfully completing a foreign language course; or

b. The applicant demonstrates linguistic competence and awareness of a foreign language at least equivalent to two (2) years of high school language

(2) In addition to the requirements of subsection (1) of this section, a student shall take five (5) electives. Three (3) of the five (5) electives shall be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and shall be in the following areas of study:

(a) Social studies;[~~,~~][;]

(b) Science;[-][;]

(c) Mathematics;[-] [;]

(d) English/language arts;[-] [;]

(e) Arts and humanities;[-] [;]

(f) Physical education and health. A student shall be limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health;[-][;]

(g) Foreign language; or[-] [~~; or~~]

(h) Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways.

(3)(a) An integrated, applied, interdisciplinary, or higher level course shall be substituted for a course listed in subsections (1) or (2) of this section, if the substituted course offers the same or greater academic rigor and the course covers or exceeds the minimum required content.

(b) Integrated mathematics courses shall be taken as a sequence. A student shall choose either the algebra/geometry sequence or the integrated mathematics sequence.

(c) An approved substitute course may include an honors course, advanced placement course, dual credit course, or a course taken at an institution.

(4) An institution may establish additional requirements to supplement this minimum academic preparation.

(5)(a) An institution shall accept a waiver of a required precollege curriculum course if:

1. A student is [~~physically~~] unable to complete a course because of a physical handicap; and

2 [~~A student's handicapping condition meets the requirements of 704 KAR 3:305, Section 3(2), and~~

~~3.~~] The school district superintendent or designee verifies that a student's handicapping condition prevents[~~will prevent~~] the student from completing the course in question.

(b) Following a determination that a student is unable to complete a course based upon paragraph (a) of this subsection, a local school may substitute another course in accordance with 704 KAR 3:305, Section 3(2).

(6) An institution shall determine whether an applicant has met these minimum academic preparation requirements.

(7) The precollege curriculum requirement shall apply to:

(a) A first-time student pursuing a baccalaureate degree with or without a declared major;

(b) A student converting from nondegree status to baccalaureate degree status;

(c) A student changing from certificate or associate[-] degree level to baccalaureate[-] degree level; or

(d) A student who, transferring from another institution, has been admitted to baccalaureate[-] degree status by the receiving institution.

(8)[~~(9)~~] The following shall be exempted from the requirements of the precollege curriculum:

(a) An adult student;

(b) A student entering baccalaureate[-]degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a GPA (grade point average) of at least 2.00 on a 4.00 scale,

(c) Active duty military personnel, their spouses, and their dependents;

(d) A student enrolled in a community or technical college or a community college type program at a university;

(e) A nonresident student because he or she is subject to the provisions of Section 2(5) of this administrative regulation; or

(f) An international student.

Section 4. Conditional Admissions Qualifications. (1) A university shall have the option of admitting conditionally a first-time student applicant to a baccalaureate degree program who has not met the requirements of Section 3 of this administrative regulation. A first-time student admitted conditionally shall remove or otherwise satisfy academic deficiencies in a manner and time period established by the enrolling institution.

(2) An institution enrolling students in a baccalaureate degree program under the conditional admission provisions in subsection (1) of this section shall admit conditionally each academic term not more than five (5) percent of a base figure. The base figure shall be the average number of students reported as enrolled with baccalaureate[-] degree status over the preceding four (4) years.

(3) Although not subject to the precollege curriculum for admission purposes, the precollege curriculum status of students enrolled in a community college [-]type program in a university shall be assessed and reported to the Council on Postsecondary Education.

(4) An applicant of superior ability, as demonstrated by exceptional academic achievement, a high ACT Assessment score, and social maturity, may be granted early admission. An applicant granted early admission by an institution shall be exempt from the provisions of Sections 2 and 3 of this administrative regulation.

(5) At the discretion of the institution, a person who does not meet college entrance requirements, including high school students, may enroll in a college course[~~courses~~] as a nondegree student.

Section 5. Transfer Students. (1) The council's General Education Transfer Policy and Implementation Guidelines, incorporated by reference, shall direct an institution's policy on the acceptance of transfer credits.

(2) An institution shall assure that a transferring student receives academic counseling concerning the transfer of credit among institutions.

(3) An institution, consistent with the provisions of subsection (1) of this section, shall accept a student's college credit earned when a course is taken both for high school credit and college credit. Credit earned through a dual enrollment arrangement shall be treated the same as credit earned in any other college course.

Section 6. Assessment and Placement of Students. (1) The Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics shall apply to:

(a) A first-time student enrolled in an associate or baccalaureate degree program or a certificate or diploma program at an institution;

(b) A student who transfers from a degree program at one (1) institution into a degree program at another institution and who has not taken and successfully passed college-level courses in mathematics and English;

(c) A student who transfers from a certificate or diploma program into a degree program and who has not taken and successfully passed college-level courses in mathematics and English, or

(d) A student converting from nondegree status to degree status who has not taken and successfully passed college-level courses in mathematics and English.

(2) A nondegree-seeking student shall be exempt from system[-]wide mandatory assessment and placement policies.

(3) Except as provided in subsection (11) of this section, an institution shall use the ACT Assessment to evaluate student competencies in mathematics, English, and reading. An institution may accept scores on the SAT in lieu of the ACT Assessment for placement in college-level courses.

(4) If a student is[it] determined to have not met the system-wide standards for readiness, an institution shall [~~for readiness,~~] use a placement exam to help place the[a] student in the proper

course.

(5) An institution shall place a student who scores below the system[-]wide standard in mathematics, English, or reading in an:

(a) Appropriate developmental course in the relevant discipline; or

(b) Entry-level college course, if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that usually associated with an entry-level course.

(6) Effective with the fall semester of 2010[~~2009~~], an institution shall satisfy the provisions of subsection (5) of this section by placing a student in the appropriate developmental course or entry-level college course within the first two (2) academic terms[~~in the first term~~] that a student is enrolled

(7)(a) A student shall not be required to enroll in a developmental course in English if the student has a sub score on the ACT Assessment of eighteen (18) or higher in English. The student shall be permitted to enroll in a credit-bearing writing course.

(b) A student shall not be required to enroll in a developmental course in Mathematics if the student has a subscore on the ACT Assessment of nineteen (19) or higher in Mathematics.

1. A student who scores between nineteen (19) and twenty-one (21) shall be permitted to enroll in a credit-bearing mathematics course.

2. A student who scores twenty-two (22) through twenty-six (26) on the ACT Assessment in Mathematics shall be permitted to enroll in a credit-bearing algebra course.

3. A student who scores twenty-seven (27) or higher on the ACT Assessment in Mathematics shall be permitted to enroll in a credit-bearing calculus course.

(c) A student who has been admitted to an institution and who demonstrates a level of competence by achieving the standards established in the Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics, which is incorporated by reference, and **by achieving**[achieves] the scores contained in paragraph (a) or (b) of this subsection shall be guaranteed placement in credit-bearing coursework.

(8) An adult student who has been admitted without the ACT Assessment test or the SAT may be placed into an appropriate course using:

(a) The ACT Residual Test;

(b) The ASSET Testing Program;

(c) The COMPASS Testing Program;

(d) The ACCUPLACER Testing Program; or

(e) An institutional placement test.

(9) An institution shall be responsible for determining the remediation required including the number of developmental[~~remedial~~] courses required, if necessary.

(10) Effective with the fall semester of 2010[~~2009~~], an institution shall enroll a student who scores below the statewide standards in an appropriate developmental or entry-level course until readiness[~~rediness~~] for credit-bearing courses has been demonstrated. An institution shall ensure that a student who completes a developmental or supplemental course shall enroll in a credit-bearing course in that subject or discipline, or in the case of reading, appropriate course work requiring college-level reading skills.

(11)(a) KCTCS shall select campus placement tests for the community and technical colleges that assess mathematics, English, and reading skills.

(b) KCTCS may use the ACT Assessment scores or SAT scores to place a student into an appropriate developmental course.

(12) [~~The~~] KCTCS shall place a degree-seeking student who scores below the system[-]wide standard in mathematics, English, or reading in an:

(a) Appropriate developmental course in the relevant discipline; or

(b) Entry-level college course if the course offers supplementary academic support, such as extra class sessions, additional labs, tutoring, and increased monitoring of students, beyond that which is usually associated with an entry-level course.

(13) KCTCS may exempt students enrolled in selected certificate and diploma programs from an assessment and placement in mathematics, English, and reading The list of certificate and diploma programs that exempt students from the required assessment and placement in mathematics, English, and reading shall be published by [~~the~~] KCTCS in the student catalog.

(14) an institution shall report to the council data that monitors the performance of first-time students in developmental and entry-level courses. The core elements of the first-time students performance monitoring system shall include, as appropriate:

(a) ACT or SAT scores;

(b) Institutional placement exam results;

(c) Information that identifies whether a course is developmental, entry-level, or entry-level with supplementary academic support provided, and

(d) Grades in developmental and entry-level courses.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a)[~~"Core Content for Mathematics, High School", Version 4.1, 2006, Kentucky Department of Education;~~

~~(b)~~] "General Education Transfer Policy and Implementation Guidelines", 2004, Council on Postsecondary Education;

(b)[~~(c)~~]"Benefits of a High School Core Curriculum", 2006, ACT; and

(c)[~~(d)~~] "Kentucky Statewide Public Postsecondary Placement Policy in English and Mathematics", 2004.[~~,~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHARD A CROFTS, Interim President

APPROVED BY AGENCY: January 14, 2009

FILED WITH LRC: January 15, 2009 at 11 a.m.

CONTACT PERSON: Dr. Michael Seelig, Interim Vice President, Academic Affairs, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, phone (502) 573-1555, ext 259, fax (502) 573-1535, email mike seelig@ky gov.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, April 14, 2009)

102 KAR 1:070. Application for retirement.

RELATES TO: KRS 161.600, 161.640

STATUTORY AUTHORITY: KRS 161.310(1), 161.600(4)

NECESSITY, FUNCTION, AND CONFORMITY. KRS 161.600(4) requires members who are eligible for retirement to apply for an annuity to receive benefit payments. **KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of funds of the retirement system and for the transaction of business.** This administrative regulation **establishes**[~~sets out~~] procedures for filing of retirement applications and for determining effective dates of annuity payments

Section 1. Applications for retirement shall be filed on forms incorporated[~~by reference~~] in[~~Section 5 of~~] this administrative regulation **and shall include:**

(1) A photocopy of the applicant's signed Social Security card;

(2) A certified birth certificate;

(3) If applicable, a certified marriage license; and

(4) A voided or cancelled check from the institution to which monthly disbursements shall be electronically transmitted.

Section 2. Applications for retirement for service shall be filed not[~~no~~] later than the first day of the month immediately preceding the month that retirement is to be effective.

(1) Retirement for service shall be effective on the first day of the month following the date that a properly completed and[~~timely~~] filed application is received at the offices of Kentucky Teachers'

Retirement System.

(2)[~~to be effective on July 1 shall be filed on or before June 1. Applications for retirement for service to be effective on June 1 shall be filed on or before May 1.~~] A member eligible to retire may exercise this right during a school year in which **the member**[~~he~~] has been in employment if there is filed with the application a statement from the chief administrative officer or other authorized representative of the employing board or agency to the effect that the member is being released from the employment contract for the purpose of retirement. [~~Applications filed for retirement for service to be effective on dates other than July 1 or June 1 shall be effective as of the first of the month following the date the application is received in the Teachers' Retirement System office.~~]

Section 3. An application received by mail and bearing the U.S. Postal Service postmark dated on or before the filing date **established**[~~set out~~] in Section 2 of this administrative regulation shall be accepted as having been filed in compliance with **Section 2 of this administrative regulation**[~~that section~~].

Section 4. **An application**[~~Applications~~] for service retirement may be approved by the **board of trustees**[~~Board of Trustees~~] with an effective date that is retroactive up to a maximum of three (3) months if the member was not under contract for the period [~~This provision shall apply to retirements that became effective on or after July 1, 1975.~~]

Section 5. Incorporation by Reference. (1) "Application for Service Retirement,[~~Revised~~] 2009[~~2006~~]", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601-3800, Monday through Friday, 8 a.m. to 5 p.m.

BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: January 9, 2009 at noon

CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, April 14, 2009)

102 KAR 1:105. 401(h) established pursuant to 26 U.S.C. 401(h) account[~~**established under 26 U.S.C. 401(h)**~~].

RELATES TO: KRS **161.420, 161.655, 161.675, 26 U.S.C. 152, 213(e), 401(h)**[~~161.675, KRS 161.420~~]

STATUTORY AUTHORITY: KRS 161.310**(1)**,[~~KRS~~] 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310**(1) requires the board of trustees to promulgate**[~~requires the Board of Trustees of Kentucky Teachers' Retirement System to promulgate all~~] administrative regulations for the administration of [~~the~~]funds of the retirement system and for the transaction of business. KRS 161.716 requires the **board of trustees**[~~Board of Trustees~~] to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. Pursuant to the provisions of KRS 161.420(5), **this administrative regulation confirms a separate 401(h) account established pursuant to**[~~there is hereby confirmed a separate 401(h) account established under~~] 26 U.S.C. 401(h).

Section 1. Definitions. (1) "Dependent" is defined by[~~the Internal Revenue Code,~~] 26 U.S.C 152, excluding subsections (b)(1), (b)(2), and (d)(1)(B).

(2) "Medical expense" **is**[~~means expense for medical care as~~] defined by 26 U.S.C. **213(e)**[~~Section 213(e)(1) of the Internal Revenue Code~~].

(3) "Retired", for purposes of eligibility to receive medical benefits described in 26 U.S.C. 401(h), means:

(a) An employee is eligible to receive benefits under the system;

(b) The employee is not still employed by the employer; and

(c) A separation from employment has occurred.

(4) "System" means the retirement system administered by the Kentucky Teachers' Retirement System.

Section 2. The[~~purpose of the~~] 401(h) account established **pursuant to**[~~under~~] 26 U.S.C. 401(h) shall[~~be to~~] pay part of the subsidy for health benefits that are otherwise payable from the Medical Insurance Fund.

Section 3. The mandatory employee contribution established **pursuant to**[~~by~~] KRS 161.420(5) shall be deposited in the Medical Insurance Fund.

Section 4. The health benefits shall be subordinate to the retirement benefits provided by the **system.**

(1)[~~System.~~ (]Life insurance protection shall not be provided by the system, except death benefits payable **pursuant to KRS 161.655**

(2)[~~under KRS 161.655.~~)] This requirement shall not be satisfied unless the actual contributions to the 401(h) account established **pursuant to**[~~under~~] 26 U.S.C. 401(h) do not exceed twenty-five (25) percent of the total actual contributions to the **system.**[~~System.~~ (]other than contributions to fund past service credits[)], determined on an aggregate basis since the inception of the 401(h) account established **pursuant to**[~~under~~] 26 U.S.C 401(h).

Section 5. **(1)** Amounts in the 401(h) account established **pursuant to**[~~under~~] 26 U.S.C. 401(h) **shall be**[~~are~~] for the exclusive purpose of paying medical expenses for a retiree, **a retiree's spouse, or**[~~his spouse, and~~] any dependent.

(2) Amounts in the 401(h) account established **pursuant to**[~~under~~] 26 U.S.C. shall not be diverted for **another**[~~any other~~] purpose.

Section 6. **An**[~~Any~~] amount in the 401(h) accounts established **pursuant to**[~~under~~] 26 U.S.C. 401(h) shall revert to the employer upon satisfaction of all liabilities for medical benefits.

Section 7. An employee shall not have an individual interest in the 401(h) accounts established **pursuant to**[~~under~~] 26 U.S.C. 401(h).

Section 8. **(1)** The 401(h) account established **pursuant to**[~~under~~] 26 U.S.C. 401(h) may be commingled with the pension assets of the trust fund for investment purposes.

(2) Investment earnings shall be credited to the 401(h) account established **pursuant to**[~~under~~] 26 U.S.C. 401(h) on a reasonable basis.

Section 9. Administrative and other expenses shall be charged to the 401(h) account established **pursuant to**[~~under~~] 26 U.S.C. 401(h) on a reasonable basis.

BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: January 9, 2009 at noon

CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, April 14, 2009)

102 KAR 1:170. Minimum distribution.

RELATES TO: KRS **161.155, 161.230,**[~~161.155,~~] 161.470, 161.520, 161.522, 161.525, 161.569, 161.620, 161.630, 161.640,

161.650, 161.661, 161.663, 26 C.F.R. 1.401(a)(9)-1 - 1.401(a)(9)-9, 26 U.S.C. 401(a)(9), 414(d)[~~1.401(a)(9)-0-1.401(a)(9)-9, 26 U.S.C. 401(a)(9)~~]

STATUTORY AUTHORITY: KRS 161.310(1),[~~KRS~~] 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate[~~Board of Trustees of Kentucky Teachers' Retirement System to promulgate all~~] administrative regulations for the administration of[~~the~~] funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees[~~Board of Trustees~~] to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. This administrative regulation implements the statutory requirements of [~~IRC Section 401(a)(9), which is codified at~~] 26 U.S.C. 401(a)(9), and is based on[~~are meant to be~~] a reasonable good faith interpretation of those statutory requirements. This administrative regulation establishes minimum distribution requirements in compliance with 26 U.S.C. 401(a)(9).

Section 1. Definitions. (1) "Member" means a member of a retirement fund established in accordance with KRS 161.220 to 161.990 and administered by the Kentucky Teachers' Retirement System.

(2) "Required beginning date" means April 1 of the calendar year following the later of:

(a) The calendar year in which the member attains age seventy and one-half (70 1/2); or

(b) The calendar year in which the member retires.

Section 2. (1) This administrative regulation shall apply to any member of a fund established in accordance with KRS 161.230.

(2) Kentucky Teachers' Retirement Systems shall pay all benefits in accordance with a good faith interpretation of the requirements of 26 U.S.C. 401(a)(9)[~~and the Code of Federal Regulations in effect under that section~~], as applicable to a governmental plan within the meaning of 26 U.S.C. 414(d). The requirements of 26 U.S.C. 401(a)(9) shall take precedence over any inconsistent provisions of KRS 161.220 to 161.990.

(3) The member's entire interest shall be distributed over the member's life or lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.

Section 3. (1) Except as provided in subsection (2) of this section, the member's entire interest shall be distributed, or begin to be distributed, to the member not[~~no~~] later than the member's required beginning date.

(2) If the member dies before distribution begins, the member's entire interest shall be distributed, or begin to be distributed, not[~~no~~] later than as follows:

(a) Except as provided in subsection (3) of this section, if the member's surviving spouse is the member's sole designated beneficiary, distributions to the surviving spouse shall begin by the later of:

1. December 31 of the calendar year immediately following the calendar year in which the member died, or

2. December 31 of the calendar year in which the member would have attained age seventy and one-half (70 1/2);

(b) If the member's surviving spouse is not the member's sole designated beneficiary, distributions to each designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died; or

(c) If there is not a[~~no~~] designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death; or

(3) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's interest shall be distributed at least as rapidly as under the method of distribution before the member's death.

(4)(a) For purposes of subsections (2) and (3) of this section[~~Section 3(2) and (3)~~] and Section 6 of this administrative regulation, distributions shall be required to begin on the member's required beginning date.

(b) If annuity payments irrevocably commence to the member before the member's required beginning date, or to the member's surviving spouse before the date distributions are required to begin to the surviving spouse pursuant to subsection (2)(a) of this section, the date distributions are considered to begin shall be the date distributions actually commence.

Section 4. (1) If the member's interest is paid in the form of annuity distributions, payments pursuant to the annuity shall satisfy the following requirements:

(a) The annuity distributions shall be paid in monthly periodic payments;

(b) The distribution period shall be over a life (or lives) or over a period certain not longer than the period described in this section or Section 5 or 6 of this administrative regulation;

(c) Once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum permitted; and

(d) Payments shall increase only as follows:

1. By the annual percentage increase provided for pursuant to KRS 161.620(5) and (6);

2. To the extent of the reduction in the amount of the member's payments to provide for a survivor benefit upon death as provided pursuant to KRS 161.630(1) and 102 KAR 1:150, Sections 4, 5, and 7, but only if the beneficiary whose life was being used to determine the distribution period described in this section dies, or if the beneficiary is the member's spouse and the payment increases pursuant to KRS 161.630(2)(a) as a result of their divorce[~~, but only if the beneficiary whose life was being used to determine the distribution period described in this section dies as provided under KRS 161.630(1) and 102 KAR 1:150, Sections 2 through 7, or if the beneficiary is the member's spouse and they divorce as provided in KRS 161.630(2)(a)~~];

3. To provide cash refunds of employee contributions upon the member's death; or

4. To pay any increased benefits that result from a plan amendment.

(2)(a) The amount that shall be distributed on or before the member's required beginning date, or if the member dies before distributions begin, the date distributions are required to begin under Section 3(2) of this administrative regulation, shall be the payment that is required for one (1) month.

(b) The second payment shall not be required to be made until the end of the next payment interval even if that payment interval ends in the next calendar year.

(c) All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for months ending on or after the member's required beginning date.

Section 5. (1) The amount of annuity paid to a member's beneficiary shall not exceed the maximum determined pursuant to[~~under~~] the incidental death benefit requirement of 26 U.S.C. 401(a)(9)(G), and the minimum distribution incidental benefit rule established in[~~under~~] 26 C.F.R. 1.401(a)(9)-6, Q&A-2.

(2)(a) The death and disability benefits provided by Kentucky Teachers' Retirement System shall be limited by the incidental benefit rule established[~~set forth~~] in 26 U.S.C. 401(a)(9)(G) and 26 C.F.R. 1.401-1(b)(1)(i).

(b)[~~or any successor law~~].As a result, the total death or disability benefits payable shall not exceed twenty-five (25) percent of the cost of all of the members' benefits received from Kentucky Teachers' Retirement System.

(3)(a) Unless the member's spouse is the sole designated beneficiary and the form of distribution is a period certain without[~~and no~~] life annuity, the period certain for an annuity distribution commencing during the member's lifetime shall not exceed the applicable distribution period for the member pursuant to the uniform lifetime table established in 26 C.F.R. section 1.401(a)(9)-9 for the calendar year that contains the annuity starting date.

(b) If the annuity starting date precedes the year in which the member reaches age seventy (70), the applicable distribution period for the member shall be the distribution period for age seventy

(70) under the uniform lifetime table established in 26 C.F.R. 1.401(a)(9)-9 plus the excess of seventy (70) over the age of the member as of the member's birthday in the year that contains the annuity starting date.

(4) If the member's spouse is the member's sole designated beneficiary and the form of distribution is a period certain **without**[~~and no~~] life annuity, the period certain shall not exceed the longer of the member's applicable distribution period, as determined pursuant to this subsection, or the joint life and last survivor expectancy of the member and the member's spouse as determined pursuant to the joint and last survivor table established in 26 C.F.R. 1.401(a)(9)-9, using the member's and spouse's attained ages as of the member's and spouse's birthdays in the calendar year that contains the annuity starting date.

Section 6. (1) If the member dies before the date distribution of the member's interest begins and there is a designated beneficiary, the entire interest payable to the member shall be distributed, beginning **not**[~~no~~] later than the time established in Section 3(2)(a) or (b) of this administrative regulation, over the life of the designated beneficiary or over a period certain not exceeding:

(a) Unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the member's death; or

(b) If the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(2) If the member dies before the date distribution of **the member's**[~~his or her~~] interest begins, the member's surviving spouse is the member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section shall apply as if the surviving spouse were the member, except that the time by which distributions are required to begin shall be determined **notwithstanding**[~~without regard to~~] Section 3(2)(a) of this administrative regulation.

BARBARA G. STERRETT, Chair
APPROVED BY AGENCY: December 15, 2008
FILED WITH LRC: January 9, 2009 at noon
CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, April 14, 2009)

102 KAR 1:225. General compliance with federal tax laws.

RELATES TO: KRS 161.716, **26 C.F.R.,** 26 U.S.C 401(a)(7),(8), (25), 414(d), (p), (u), 503(b)**, 38 U.S.C. 4301 - 4335**
STATUTORY AUTHORITY: KRS **161.310(1),** 161.716
NECESSITY, FUNCTION, AND CONFORMITY: KRS **161.310(1) requires the board of trustees to promulgate**[~~161.310 requires the Board of Trustees of Kentucky Teachers' Retirement System to promulgate all~~] administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the **board of trustees**[~~Board of Trustees~~] to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. Kentucky Teachers' Retirement System shall administer the Retirement System as a qualified defined benefit plan pursuant to 26 U.S.C. 401(a) and 26 U.S.C. 414(d) of the Internal Revenue Code, **26 U.S.C., 26 C.F.R.,**[~~regulations~~] and such other Internal Revenue Code Sections as applicable. This administrative regulation establishes Kentucky Teachers' Retirement System's compliance with 26 U.S C 401(a) and [~~26 U.S.C.~~] 503(b) in order for the Kentucky Teachers' Retirement System to maintain its tax qualified status as a public defined benefit plan.

Section 1. Compliance with 26 U.S.C. 401(a)(7) and [~~401(a)~~](8) for Vesting and Forfeitures. (1) A plan member shall be 100 **percent**[%] vested in the member's accumulated contributions at all times.

(2)**(a)** In conformity with 26 U.S.C. 401(a)(8), **a**[~~any~~] forfeiture of benefits by **a**[~~any~~] member or former member of the plan shall not be used to pay benefit increases.

(b)[~~However, these~~] Forfeitures shall be used to reduce employer contributions.

Section 2. Compliance with 26 U.S.C. 414(p) for Qualified Domestic Relations Orders. If benefits are payable pursuant to a qualified domestic relations order that meets the requirements of a domestic relations order as defined in 26 U.S.C. 414(p), then the applicable requirements of 26 U.S.C. 414(p) shall be followed by the retirement system.

Section 3. Compliance with 26 U.S.C. 414(u) for Reemployed Veterans. Effective December 12, 1994,[~~notwithstanding any other provision of the retirement system law,~~] Contributions, benefits**,** and service credit with respect to qualified military service shall be governed by 26 U.S.C. 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994**, 38 U.S.C. 4301 - 4335**.

Section 4. Compliance with 26 U.S.C. 503(b) for Prohibited Transactions.[~~Effective as of July 1, 1989,~~] The board shall not engage in a transaction prohibited by 26 U.S.C. 503(b).

Section 5. Compliance with 26 U.S.C. 401(a)(25) for Actuarial Assumptions.

(1) Kentucky Teachers' Retirement System shall **comply with 26 U.S.C. 401(a)(25) to** determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the board by **resolution for specific benefit calculation purposes.**

(2)[~~rule,~~] These benefits shall not be subject to employer discretion.

BARBARA G. STERRETT, Chair
APPROVED BY AGENCY: December 15, 2008
FILED WITH LRC: January 9, 2009 at noon
CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, April 14, 2009)

102 KAR 1:230. Limitations on benefits.

RELATES TO: KRS 161.611, **26 C.F.R. 1.415, 26 U.S.C. 125, 132(f)(4), 402, 414, 415, 417, 457, 3401, 6041, 6051, 6052**[~~26 U.S.C. 415~~]
STATUTORY AUTHORITY: KRS 161.310**(1)**, 161.716
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310**(1) requires the board of trustees**[~~requires the Board of Trustees of the Teachers' Retirement System of the state of Kentucky~~] to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the **board of trustees**[~~Board of Trustees~~] to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of members of the retirement system. This administrative regulation establishes the limitations on benefits required by 26 U.S.C. 415[~~of the Internal Revenue Code~~].

Section 1. Definitions. (1) **"415(b) limit" means the limitation**

on benefits established by 26 U.S.C. 415(b).

(2) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).

(3) "Annual benefit" means, for purposes of the 415(b) limit, a benefit payable annually in the form of a straight life annuity (without ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)). The "benefit attributable" is determined in accordance with 26 C.F.R. 1.415(b).

(4) "Defined dollar benefit limitation" means $160,000, as adjusted, effective January 1 each year, in the manner established by[as] the Secretary of the United States Treasury [shall prescribe,] pursuant to 26 U.S.C. 415(d)[of the Internal Revenue Code], and payable in the form of a straight life annuity. A limitation as adjusted under 26 U.S.C. 415(d) applies[shall apply] to limitation years[beginning with or within the calendar year] for which the adjustment applies.

(5)[(2)] "Limitation year" means the calendar year.

(6)[(3)] "Maximum permissible benefit" means the defined benefit dollar limitation (adjusted or limited, if required, according to [Section 2 of] this administrative regulation).

(7) "Nonqualified service credit" means, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, permissive service credit other than that allowed with respect to:

(a) Service as an employee of the Government of the United States or any state, agency, or political subdivision thereof (other than military service or service for credit that was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3);

(b) Service as an employee, other than as an employee described in paragraph (a) of this subsection, of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) that is a public, private, or sectarian school that provides elementary education or secondary education through grade twelve (12), or a comparable level of education as determined pursuant to the applicable law of the jurisdiction in which the service was performed;

(c) Service as an employee of an association of employees described in paragraph (a) of this subsection; or

(d) Military service, other than qualified military service pursuant to 26 U.S.C. 414(u), recognized by the retirement system.[(4) "415(b) limit" means the limitation on benefits established by 26 U.S.C. 415(b).

(5) "415(c) limit" means the limitation on annual additions established by 26 U.S.C. 415(c).]

Section 2. Adjustments and Limitations. (1) If the member has fewer than ten (10) years participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction.

(a) The numerator shall be the number of years (or part thereof) of participation in the plan, and the denominator shall be ten (10).

(b) The reduction established[provided] in this subsection shall not apply to preretirement death and disability benefits.

(2) If the benefit of a member begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the participant at the earlier age shall be an annual benefit payable in the form of a straight life annuity, beginning at the earlier age, that shall be[is] the actuarial equivalent of the defined benefit dollar limitation applicable to the member at age sixty-two (62) (adjusted pursuant to[under] subsection (1) of this section, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) shall be determined as the lesser of:

(a) The actuarial equivalent (at the earlier age) of the defined benefit dollar limitation computed using the interest rate and mortality table specified by the system actuary; and

(b) The actuarial equivalent (at the earlier age) of the defined benefit dollar limitation computed using a five (5) percent interest rate and the applicable mortality table as specified by the system actuary.

1. Any decrease in the defined benefit dollar limitation determined in accordance with this subsection shall not reflect a mortality decrement if benefits are not forfeited upon the death of the participant.

2. If any benefits are forfeited upon death, the full mortality decrement shall be taken into account.

(3)[(c)] The reductions provided for in this subsection shall not apply:

(i) If the member's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service; or

(ii)] to preretirement disability benefits or preretirement death benefits.

(4)[(3)] If the benefit of a participant begins after the participant attains age sixty-five (65), the defined benefit dollar limitation applicable to the member at the later age shall be the annual benefit payable in the form of a straight life annuity, beginning at the later age, that shall be[is] actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age sixty-five (65) (adjusted pursuant to[under] subsection (1) of this section, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after sixty-five (65) shall be determined as follows:

(a) The lesser of the actuarial equivalent (at the later age) of the defined benefit dollar limitation computed using the interest rate and mortality table specified by the system actuary; and

(b) The actuarial equivalent (at the later age) of the defined benefit dollar limitation computed using a five (5) percent interest rate assumption and the mortality table specified by the system actuary. For these purposes, mortality between age sixty-five (65) and the age at which benefits commence shall be ignored.

[(4) For purposes of the 415(b) limit, the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to 26 U.S.C. 415(n)) and to rollover contributions (as defined in 26 U.S.C. 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.]

(5) If the benefit under the retirement system is other than the form specified in Section 1(3)[subsection 4] of this administrative regulation, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors established in 26 C.F.R. 1.415(b)[prescribed in Treasury Regulations].

(6) If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then subsection (5) of this section shall be applied by either reducing the section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount determined using the assumptions established in 26 C.F.R. 1.415(b)-1(c)(2)(ii)[specified in Treasury Regulation section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(a) For a benefit paid in a form to which 26 U.S.C. 417(e)(3) does not apply, a monthly benefit, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced 415(b) limit applicable at the annuity starting date that[which] is the "lesser of", if[when] adjusted in accordance with the following assumptions):

1. The annual amount of the straight life annuity (if any) payable to the member under the retirement system commencing at the same annuity starting date as the form of benefit to the member;[.] or

2. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five (5) percent interest assumption (or the applicable statutory interest assumption) and:

a. For limitation years prior to February 1, 2009, the applicable mortality tables described in 26 C.F.R. 1.417(e)-1(d)(2).[Treasury Regulation Section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62)]; and

b. For limitation years after December 31, 2008, the applicable mortality tables described in 26 U.S.C. 417(e)(3)(B).

(8)[or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or]

[(b) For a benefit paid in a form to which 26 U.S.C. 417(e)(3)

~~applies a lump sum benefit, the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions:~~

~~1. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the retirement system for actuarial experience;~~

~~2. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and five-tenths (5.5) percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or~~

~~3. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the thirty (30) year Treasury rate (prior to January 1, 2009, using the rate in effect for the month prior to retirement, and on and after January 1, 2009, using the rate the in effect for the first day of the plan year with a one (1) year stabilization period)) and the applicable mortality rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the morality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.~~

~~(7)~~] Effective on and after January 1, 2009, for purposes of applying the 415(b) limit to a member[~~with no lump sum benefit~~], the following shall apply:

(a) A member's applicable 415(b) limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any automatic cost of living adjustments; **and**

(b)1. To the extent that the member's annual benefit equals or exceeds the 415(b) limit, the member shall no longer be eligible for cost of living increases until[~~such time as~~] the benefit plus the accumulated increases are less than the 415(b) limit;

2.[~~(c) Thereafter,~~] In any subsequent limitation year, a member's annual benefit, including any automatic cost of living increases, shall be tested under the then applicable 415(b) limit including any adjustment to the 26 U.S.C. 415(b)(1)(A) dollar limit **pursuant to**[~~under~~] 26 U.S.C. 415(d) **and 26 C.F.R. 1.415(b)**[~~, and the applicable Treasury Regulations~~].

[~~(8) On and after January 1, 2009, with respect to a member who receives all or a portion of the member's annual benefit in a lump sum, a member's applicable limit shall be applied taking into consideration cost of living increases as required by 26 U.S.C. 415(b) and applicable Treasury Regulations.~~]

Section 3. Participation in Other Qualified Plans: Aggregation of Limits. (1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in 26 U.S.C. 414(i) maintained by the member's employer in a retirement system shall apply as if the total benefits payable under all these defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in 26 U.S.C. 414(i) maintained by the member's employer in a retirement system shall apply as if the total annual additions under all these defined contribution plans in which the member has been a member were payable from one (1) plan. [~~If a participant has fewer than ten (10) years of service with the employer, the defined benefit compensation limitation shall be multiplied by a fraction. The numerator shall be the number of years (or part thereof) of service with the employer, and the denominator shall be 10.~~

~~Section 3. Effective Date. This administrative regulation shall be effective for limitation years ending after December 31, 2001, except as provided in Section 2(4) of this administrative regulation.~~]

Section 4. Effect on Members. **(1)** Benefit increases resulting from the increase in the limitations of 26 U.S.C. 415(b)[~~of the Internal Revenue Code~~] shall be provided to all current and former members, with benefits limited by 26 U.S.C. 415(b), who have an accrued benefit under the plan immediately prior to the effective date.

(2) These benefit increases shall not be provided to current and former members who have an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under 26 U.S.C. 415(b).

Section 5. Benefits Not Taken Into Account for 415(b) Limit [~~For purposes of this administrative regulation,~~] The following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit **that**[~~which~~] is not directly related to retirement income benefits; **and**

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

[~~(3) Any other benefit not required under 26 U.S.C. 415(b)(2) and Treasury Regulations thereunder to be taken into account for purposes of the limitation of 26 U.S.C. 415(b)(1).~~]

Section 6. 415(c) Limit. **Except as provided in Section 7 of this administration regulation,** after-tax member contributions or other annual additions with respect to a member shall not exceed the lesser of $40,000 (as adjusted pursuant to 26 U.S.C. 415(d)) or 100 percent of the member's compensation.

(1)(a) Annual additions shall be defined to mean the sum (for any year) of employer contributions to a defined contribution plan, post-tax member contributions, and forfeitures credited to a member's individual account.

(b) Member contributions shall be determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying the 415(c) limits only[~~and for no other purpose~~], the definition of compensation, if applicable, shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by **26 C.F.R.**[~~Treasury Regulation Section~~] 1.415(c)-2.[~~or successor regulation;~~] except, that member contributions picked up under 26 U.S.C. 414(h) shall not be treated as compensation.

(3) Unless another **description**[~~definition~~] of compensation that is permitted by **26 C.F.R.**[~~Treasury Regulation Section~~] 1.415(c)-2[~~, or successor regulation,~~] is specified by a retirement system, compensation shall be **described**[~~defined~~] as wages within the meaning of 26 U.S.C. 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement **pursuant to**[~~under~~] 26 U.S.C. 6041(d), 6051(a)(3) and 6052 and shall be determined without regard to any rules under 26 U.S.C. 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 26 U.S.C. 3401(a)(2)).

(a)**1.**[~~However,~~] For limitation years beginning on and after January 1, 1998, compensation shall also include amounts that would otherwise be included in compensation but for an election under 26 U.S.C. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

2. For limitation years beginning on and after January 1, 2001, compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of 26 U.S.C. 132(f)(4).

(b) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of two and one-half (21/2) months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

1. The payment is:

a. Regular compensation for services during the employee's regular working hours;

b. Compensation for services outside the employee's regular working hours, such as overtime or shift differential; or

c. Commissions, bonuses, or other similar payments; and

2. Absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with unused accrued bona fide sick, vacation, or other leave that the employee would have been able to use if employment had continued.

(c) Back pay, within the meaning of **26 C.F.R.**[~~Treasury Regulation Section~~] 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included **pursuant to this description**[~~under this definition~~].

Section 7. Service Purchases under Section 415(n). (1) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one (1) or more contributions to purchase permissive service credit under a retirement system, then the requirements of 26 U.S.C. 415(n) shall be treated as met only if:

(a) The requirements of 26 U.S.C. 415(b) are met, determined by treating the accrued benefit derived from all these contributions as an annual benefit for purposes of the 415(b) limit; or

(b) The requirements of 26 U.S.C. 415(c) are met, determined by treating all these contributions as annual additions for purposes of the 415(c) limit.

(2) For purposes of applying this section, a retirement system shall not fail to meet the reduced limit under 26 U.S.C. 415(b)(2)(C) solely by reason of this section and shall not fail to meet the percentage limitation **pursuant to**[~~under~~] 26 U.S.C. 415(c)(1)(B) solely by reason of this section.

(3)(a) **Permissive service credit shall consist of**[~~For purposes of this section, the term "permissive service credit" means~~] service credit:

1. Recognized by a retirement system for purposes of calculating a member's benefit under a retirement system;

2. [~~Which~~]The member has not received under a retirement system; and

3. **That**[~~Which~~] the member may receive only by making a voluntary additional contribution, in an amount determined under a retirement system, which does not exceed the amount necessary to fund the benefit attributable to the service credit.

(b) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (a)2 of this subsection, may include service credited in order to provide an increased benefit for service credit **that**[~~which~~] a member is receiving under a retirement system.

(4) The retirement system shall fail to meet the requirements of this section if:

(a) More than five (5) years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(b) Any nonqualified service credit is taken into account **pursuant to**[~~under~~] this section before the member has at least five (5) years of participation under a retirement system.

(5) [~~For purposes of subsection (4) of this section, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" shall mean permissive service credit other than that allowed with respect to:~~

~~(a) Service as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in 26 U.S.C. 415(k)(3));~~

~~(b) Service as an employee (other than as an employee described in clause (a)) of an education organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;~~

~~(c) Service as an employee of an association of employees who are described in paragraph (a) of this subsection; or~~

~~(d) Military service (other than qualified military service under 26 U.S.C. 414(u)) recognized by the retirement system.~~]

[~~(6)~~] In the case of service described in **Section 1(7)(a), (b), or (c) of this administrative regulation**[~~subsection (5)(a), (b), or (c) of this section~~], the service shall be nonqualified service if recognition of the service would cause a member to receive a retirement benefit for the same service under more than one (1) plan.

(6)[~~(7)~~] In the case of a trustee-to-trustee transfer after December 31, 2001, to which 26 U.S.C. 403(b)(13)(A) or 26 U.S.C. 457(e)(17)(A) applies, [~~(~~]without regard to whether the transfer is made between plans maintained by the same employer[~~)~~]:

(a) The limitations of subsection (4) of this section shall not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) The distribution rules applicable under federal law to a retirement system shall apply to these amounts and any benefits attributable to these amounts.

(7)(a)[~~(8)~~] For an eligible member, the 415(c) limit shall not be applied to reduce the amount of permissive service credit **that**[~~which~~] may be purchased to an amount less than the amount **that**[~~which~~] was allowed to be purchased under the terms of the retirement system as in effect on August 5, 1997.

(b) For purposes of this subsection, an eligible member shall be an individual who first became a member in the retirement system before January 1, 1998.

Section 8. Modification of Contributions for 415(c) and 415(n) Purposes. The retirement system may modify a request by a member to make a contribution to a retirement system if the amount of the contribution would exceed the limits provided in 26 U.S.C. 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the retirement system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits **established in**[~~under~~] 26 U.S.C. 415(c) or 415(n).

(2) If payment pursuant to section (1) of this subsection shall not avoid a contribution in excess of the limits **established in**[~~imposed by~~] 26 U.S.C. 415(c) or 415(n), the retirement system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

Section 9. Repayments of Cashouts. Any repayment of contributions, [~~(~~including interest thereon,[~~)~~] to the retirement system with respect to an amount previously refunded upon a forfeiture of service credit under the retirement system or another governmental plan maintained by the Commonwealth or a local government within the Commonwealth shall not be taken into account for purposes of the 415(b) or (c) limits.

BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: January 9, 2009 at noon

CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, April 14, 2009)

102 KAR 1:240. Increase in compensation limit.

RELATES TO: **161.220(10), 26 C.F.R. 1.401(a)(17)-1(d)(4)(ii),** 26 U.S.C. 401(a)(17)

STATUTORY AUTHORITY: KRS 161.310**(1)**, 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310**(1) requires the board of trustees**[~~requires the Board of Trustees of the Teachers' Retirement System of the state of Kentucky~~] to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the **board of trustees**[~~Board of Trustees~~] to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the

interests of the members and survivors of members of the retirement system. This administrative regulation establishes the increase in compensation limit as provided by [~~the Internal Revenue Code,~~] 26 U.S.C. 401(a)(17)(A).

Section 1. Definition. "Annual compensation" is defined by[~~in~~] KRS 161.220(10).

Section 2. Increase in Limit. The annual compensation of each member taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed $200,000.

(1) For purposes of determining benefit accruals in a plan year beginning after December 31, 2001, compensation for any prior determination period shall be limited as provided in Section 3 of this administrative regulation.

(2) If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which shall be[is] the number of months in the short determination period, and the denominator of which shall be[is] twelve (12).

(3) If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for the prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.

Section 3. Cost-of-living Adjustment. (1) The $200,000 limit on annual compensation in Section 2 of this administrative regulation shall be adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B).

(2)[~~of the Internal Revenue Code.~~] The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year.

Section 4. In determining benefit accruals in plan years beginning after December 31, 2001, the annual compensation limit in Section 2 of this administrative regulation shall be:

(1) $150,000 for any determination period beginning in 1996 or earlier for members who became participants on or after July 1, 1996;[.]

(2) $160,000 for any determination period beginning in 1997, 1998, or 1999 for members who became participants on or after July 1, 1996;[.]

(3) $170,000 for any determination period beginning in 2000 or 2001 for members who became participants on or after July 1, 1996; or[.]

(4) Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration pursuant to[under] this provision,[~~the rules of~~] 26 U.S.C. 414(q)(6) shall apply, except that[~~in applying such rules,~~] the term, "family", shall include only the spouse of the member and any lineal descendant of the employee who has not attained age nineteen (19) before the close of the year.

Section 5. The annual compensation on which contributions are reported shall not exceed the maximum annual compensation limit as established[~~specified~~] in Sections 2 through 4 of this administrative regulation.

(1) The retirement system shall notify employers of the maximum annual compensation limit.

(2) Each employer shall report contributions on all annual compensation up to the maximum annual limit.

(3) Once an employee's annual compensation has reached the maximum annual limit, the employer shall continue to report the employee's creditable compensation but shall not report any further employer or employee contributions on the employee's annual compensation.

(4) If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.

Section 6. A member who became a participant prior to July 1, 1996, shall be an eligible participant for purposes of 26 C.F.R.

BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: January 9, 2009 at noon

CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, April 14, 2009)

102 KAR 1:245. Rollovers and transfers of contributions to other plans.

RELATES TO: KRS 161.220 - 161.990, 26 U.S.C. 401(a), 402(c), 403(a), (b), 408, 408A, 414(p), 457(b)[~~161.220 to 161.990, and 26 U.S.C. secs. 401(a)(31), 402(c), 408(d)(3)~~]

STATUTORY AUTHORITY: KRS 161.310(1), 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate[~~161.310 requires the Board of Trustees of Kentucky Teachers' Retirement System to promulgate all~~] administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees[~~Board of Trustees~~] to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. This administrative regulation establishes what constitutes eligible rollover distributions, eligible retirement plans, distributions, distributees, and direct rollovers for purposes of compliance with 26 U.S.C. 401(a).

Section 1. "Eligible rollover distribution" shall include any distribution of all or any portion of the balance to the credit of the distributee, except:

(1) A[~~Any~~] distribution that is one (1) of a series of substantially equal periodic payments made at least annually:

(a) For the life or life expectancy of the distributee and the distributee's designated beneficiary;

(b) The joint lives or joint life expectancy of the distributee and the distributee's designated beneficiary, or[.]

(c) For a specified period of ten (10) years or more;

(2) Any distribution to the extent that the distribution shall be required pursuant to[~~such distribution is required under~~] 26 U.S.C. 401(a)(9), except as provided in Section 2 of this administrative regulation;

(3) The portion of any distribution that is not includable[~~includible~~] in gross income; or[~~and~~]

(4) Any other distribution that is reasonably expected to total less than $200 during the year.

Section 2. (1) Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable[~~includible~~] in gross income. [~~However,~~]This portion may be transferred:

(a) Only to:

[~~(a)~~]1. An individual retirement account or annuity described in 26 U.S.C. 408(a) or (b);

2. A qualified defined contribution plan described in 26 U.S.C. 401(a);

3. On or after January 1, 2007, to a qualified defined benefit plan described in 26 U.S.C. 401(a); or

4. An annuity contract described in 26 U.S.C. 403(b); and

(b) To an account or plan provided for in paragraph (1)2. through 4. of this subsection[~~Section 2(1)(a) 2-4 of this administrative regulation~~] that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution:

1. That is includable[includible] in gross income; and

2. That is not so includable.

(2) Effective January 1, 2002, the[definition of] eligible rollover distribution shall also include[also includes] a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p).

(3) "Eligible retirement plan" shall include any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in 26 U.S.C. 408(a);

(b) An individual retirement annuity described in 26 U.S.C. 408(b);

(c) An annuity plan described in 26 U.S.C. 403(a);

(d) A qualified trust described in 26 U.S.C. 401(a);

(e) Effective January 1, 2002, an annuity contract described in 26 U.S.C. 403(b);

(f) Effective January 1, 2002, a plan eligible under 26 U.S.C. 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system;[.] or

(g) Effective January 1, 2008, a Roth IRA described in 26 U.S.C. 408A.

(4)(a) "Distributee" shall include an employee or former employee and the following:

1. The employee's or former employee's surviving spouse; and

2. The employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p).

(b) Effective January 1, 2007, a "distributee" shall also include a nonspouse beneficiary who is a designated beneficiary as defined by 26 U.S.C. 401(a)(9)(E).

1.[However,] A nonspouse beneficiary shall[may] rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution; and

2.[, and] The account or annuity shall be treated as an "inherited" individual retirement account or annuity.

(c) "Direct rollover" shall include a payment by the plan to the eligible retirement plan specified by the distributee.

BARBARA G. STERRETT, Chair

APPROVED BY AGENCY: December 15, 2008

FILED WITH LRC: January 9, 2009 at noon

CONTACT PERSON: Robert B. Barnes, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199.

GENERAL GOVERNMENT CABINET
Kentucky Board of Optometric Examiners
(As Amended at ARRS, April 14, 2009)

201 KAR 5:120. Practice of optometry outside of regular office for a charitable purpose.

RELATES TO: KRS[320.200,320.240(4),] (7), 320.310(1)(f)

STATUTORY AUTHORITY: KRS 320.240(4), (7), 320.310(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 320.310(1)(f) authorizes the board to promulgate administrative regulations to permit the practice of optometry outside of the licensee's regular office for a charitable purpose as defined by the board. This administrative regulation establishes the standards for the practice of optometry outside the licensee's office for a charitable purpose.[KRS 320.200 authorizes the board to regulate and control the practice of optometry in the public interest. KRS 320.240(4) and (7) requires the board to promulgate administrative regulations to reasonably regulate the profession of optometry. This administrative regulation addresses the practice of optometry outside of an optometrist's regular office for a charitable purpose in a manner that will not lead to discipline under KRS 320.310(1)(f).]

Section 1. Definitions. (1) "Charitable organization" means a nonprofit entity accepted by the Internal Revenue Service and organized for benevolent, educational, philanthropic, humane, social welfare, or public health purposes.

(2) "Charitable purpose" means a purpose that holds itself out to be benevolent, educational, philanthropic, humane, or for social welfare or public health.

Section 2. In order for a Kentucky licensed optometrist to provide optometric services outside the optometrist's regular office for a charitable purpose, a charitable organization shall provide to the board:

(1) A written request to include the services of Kentucky licensed optometrists at least thirty (30) days before the optometric services are to be offered;

(2) Proof of its nonprofit status;

(3) Assurance that the participating optometrist shall not be compensated or remunerated in any manner;

(4) The names of all participating optometrists;

(5) The address of the location where the optometric services will be offered;

(6) The dates and times the optometric services will be offered, which shall not exceed seven (7) days per event;

(7) A statement of the nature of the optometric services to be provided and the class of individuals who are intended to be the recipients of the optometric services;

(8) A statement that the charitable organization shall require every participating optometrist to develop and maintain a permanent patient record for each individual treated by that optometrist; and

(9) A statement that the charitable organization shall require every participating optometrist to comply with the minimum eye examination requirements of 201 KAR 5:040, Section 7.[A Kentucky licensed optometrist may offer optometric services outside the optometrist's regular office for a charitable purpose][without violating KRS 320.310(1)(f)][if the following conditions are met:

(1)(a) The charitable organization shall submit a written request to include the services of Kentucky licensed optometrists at least thirty (30)[ninety (90)] days before the optometric services are to be offered; and shall include:][or]

[(b)][The board may waive the ninety (90) day deadline based on exigent circumstances that prevented the charitable organization from complying with the ninety (90) day deadline.

(2)][The charitable organization shall submit proof of its nonprofit status;

(c)][(3)][The charitable organization provides assurance that the participating optometrists shall not be compensated or remunerated in any manner;

(d)][(4)][The charitable organization denotes the names of all participating optometrists, and location, date, and time the optometric services will be offered, which shall not exceed seven (7) days insert per event;

(e)][(5)][The charitable organization states the nature of the optometric services to be provided and the class of individuals who are intended to be the recipients of the optometric services;

(f) A statement that][(6)][the charitable organization shall require every participating optometrist to develop and maintain a permanent patient record for each individual treated by optometrists.

(g) A statement that][(7)][the charitable organization shall require every participating optometrist to comply with the minimum eye examination requirements of 201 KAR 5:040, Section 7.]

Section 3. The board or its acting president may waive the thirty (30) day requirement based on exigent circumstances that prevented the charitable organization from complying with the thirty (30) day requirement.

Section 4. The board or its acting president shall notify the charitable organization in writing if[whether] its request has been approved within ten (10) business days of receipt of the completed request.

Section 5. A written request may include multiple events on different dates if[as long as] the events are scheduled within twelve (12) months o the date the completed request is received by the board.

Section 6. **Requirements for Eyeglasses Provided. (1) If eyeglasses are provided as part of the charitable service, all materials shall be new, first quality and free from defects.**

(2) Lenses shall be:

(a) First quality and meet the requirements of inspection, tolerance, and testing procedures as outlined in the American Standard Prescription Requirements; and

(b) Made to meet the individual recipient's personal prescription.

Section 7. Failure to comply with the terms of this administrative regulation may result in denial or withdrawal of approval.

DR. JERALD F. COMBS, O.D., President
APPROVED BY AGENCY: February 11, 2009
FILED WITH LRC: February 12, 2009 at 2 p.m.
CONTACT PERSON: Connie Calvert, Executive Director, Kentucky Board of Optometric Examiners, Spindletop Administrative Building Suite 305, 2624 Research Park Drive, Lexington, Kentucky 40511, phone (859) 246-2744, fax (859) 246-2746.

GENERAL GOVERNMENT CABINET
Kentucky Board of Architects
(As Amended at ARRS, April 14, 2009)

201 KAR 19:035. Qualifications for examination and licensure.

RELATES TO: KRS 323.050(2), (3), 323.060, 323.120(1)(a)-(i)
STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)
NECESSITY, FUNCTION, AND CONFORMITY. KRS 323.050(2) allows the board to prescribe the experience requirements for licensure. KRS 323.210(1)(b) and (2) require the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his application has been filed. This administrative regulation establishes the prerequisites for taking the examination and obtaining a license.

Section 1. Eligibility to Take the State Board Examination. A person who possesses the qualifications prescribed in KRS 323.050, and this administrative regulation, shall be eligible to take the examination.

Section 2. General Requirements. (1)(a) The board shall verify the good moral character of an applicant for examination with employers and registered architects who have knowledge of his moral character.

(b) An applicant shall not be considered to be of good moral character if he has:

1. Committed an act specified in KRS 323.120(1)(a) through (i);

2. Chronic alcoholism, persistent drug abuse, or an act of behavior that would, if the applicant were licensed, jeopardize or impair his judgment to meet professional responsibility as an architect to the public welfare and safety; or

3. Violated a provision of KRS Chapter 323 or a board administrative regulation either before or after admission to the examination.

(c) If an applicant has violated the registration laws of another jurisdiction, the board shall determine whether the violation adversely affected the moral character of the applicant.

(2) To be eligible for examination, an applicant shall submit to the board college transcripts and verification from employers and architects that **the applicant**[he] has:

(a) Met the requirements of KRS 323.050 and 323.060 and this administrative regulation; and

(b) Had well diversified and satisfactory training in architectural practice as evidenced by completion of the first year of the Intern Development Program specified in Section 4 of this administrative regulation.

(3) The documentation required by subsection (2) of this section shall be verified, compiled, and transmitted in bound record form by the National Council of Architectural Registration Boards.

Section 3. Education Requirements. (1) An applicant who has met the requirements of Section 2 of this administrative regulation shall [in addition:

(a)] hold a degree in architecture from a degree program that has been accredited by the National Architectural Accrediting Board not later than two (2) years after termination of enrollment[; or

(b) Have satisfied the education standard specified in the National Council of Architectural Registration Boards pamphlet "NCARB Education Standard", by earning five (5) years of equivalent education credits as determined by the experience and education definitions of Table A and its footnotes.

(2) The minimum five (5) years equivalent education credits shall be accumulated prior to June 1, 1992].

Section 4. Training Requirements for Licensure. (1) An applicant who has passed the examination shall have satisfied the Intern Development Program training requirements as provided by Chapter 1, Section 3 of the National Council of Architectural Registration Boards "Handbook for Interns and Architects" prior to final application for licensure.

(2) The documentation required by subsection (1) of this section shall be verified, compiled, and transmitted in bound record form by the National Council of Architectural Registration Boards.

Section 5. Incorporation by Reference. (1) [The following material is incorporated by reference:

(a)] "Handbook for Interns and Architects", 2008-2009[1996-1997] Edition, National Council of Architectural Registration **Board**[Boards], is incorporated by reference [; and

(b) "NCARB Education Standard" 1996-1997 Edition, National Council of Architectural Registration Boards.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Architects, Spindletop Administration Building, 2624 Research Park Drive, Suite 101, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to **4:30**[4] p.m.

T. REXFORD CECIL, Executive Director
For DAVID HEYNE, President
APPROVED BY AGENCY: December 9, 2008
FILED WITH LRC: January 15, 2009 at noon
CONTACT PERSON: Rex Cecil, 2624 Research Park Drive, Suite 101, Lexington, Kentucky 40511, phone (859) 246-2069, fax (859) 246-2431.

GENERAL GOVERNMENT CABINET
Kentucky Board of Architects
(As Amended at ARRS, April 14, 2009)

201 KAR 19:040. Examinations required; general provisions.

RELATES TO: KRS 323.050[(1), (3)], 323.215
STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his application has been filed. This administrative regulation specifies the examination required by the board, and establishes general provisions relating to the administration of the examination.

Section 1. Examination Definition; Administration. (1) Each

applicant for licensure shall successfully complete the Architect Registration Examination (ARE), which is developed and graded by the National Council of Architectural Registration Boards (NCARB).

(2) The board shall designate each testing service consultant who shall administer the examination in accordance with the agreement between the consultant and NCARB.

(3) The examination sites and schedules shall be as designated by the testing service and agreed to by NCARB.

Section 2. Conditions of Examination. (1) Grading of the examination shall be in a accordance with the national grading procedure administered by NCARB.

(2) The board shall adopt the scoring procedures recommended by NCARB.

(3) Information pertaining to the subject matter of the examination shall not be given to an applicant in advance, except as specifically authorized by the board.

(4) The board may approve transfer credits for each part of the examination passed prior to the 1983 ARE. Information as to transfer credits shall be provided, if appropriate, to an applicant who requests an application form.

Section 3. (1) An applicant who has passed all divisions of the ARE by January 1, 2006, regardless of the time taken, has passed the examination.

(2) An applicant who has passed one or more but not all divisions of the ARE by January 1, 2006, shall have five (5) years to pass all remaining divisions

(a) A passing grade for any remaining division shall be valid for five (5) years, after which time the division shall be retaken if the remaining divisions have not been passed.

(b) The five (5) year-period shall commence after January 1, 2006, on the date when the passed division is administered.

(c) Divisions passed before January 1, 2006 shall not have to be retaken.

(3) An applicant who has not passed any division of the ARE by January 1, 2006 shall be governed by the five (5) year requirement, which shall commence on the date when the first passed division is administered.

Section 4. Applicant Notice. Each applicant who has applied and been deemed eligible to take the examination shall be notified of the examination sites and the procedures to make the appointments with the testing service centers to take the examination divisions of his choosing. Special instructions and limitations shall be issued to each applicant.

Section 5. Transfer of Scores. (1) The board, upon proper application, may accept passing scores achieved on divisions of the ARE administered and attested to by another NCARB member board under the terms of Section 3 of this administrative regulation.

(2) The board, upon proper application and payment of the applicable fee, may forward the grades achieved by an applicant in the various divisions of the examination given under the board's jurisdiction to any other duly constituted architectural registration board and to NCARB for use in evaluating the applicant's eligibility for NCARB certification. The applicant shall state his or her reason for requesting transfer. The transfer shall terminate the applicant's application pending before the board.

Section 6. Conditions of Examination. (1) Upon allegation of misbehavior on the part of an applicant in connection with taking the examination, the board shall investigate the allegation and take appropriate action including suspending or revoking test taking privileges and the cancellation of test scores.

(2) Misbehavior shall include[~~, without limitation~~]:

(a) Falsifying information on the examination application;

(b) Cheating on the examination;

(c) A violation of examination guidelines; or

(d) A violation of a confidentiality agreement with respect to the examination.

T. REXFORD CECIL, Executive Director
For DAVID HEYNE, President
APPROVED BY AGENCY: December 9, 2008
FILED WITH LRC: January 15, 2009 at noon
CONTACT PERSON: Rex Cecil, 2624 Research Park Drive, Suite 101, Lexington, Kentucky 40511, phone (859) 246-2069, fax (859) 246-2431.

GENERAL GOVERNMENT CABINET
Kentucky Board of Architects
(As Amended at ARRS, April 14, 2009)

201 KAR 19:070. Duplicate certificates.

RELATES TO: KRS 323.100, 323.210(2), (5), (7)
STATUTORY AUTHORITY: KRS 323.210(2), (5), (7)
NECESSITY, FUNCTION, AND CONFORMITY. KRS 323.100 specifies the form of the license issued by the board. This administrative regulation provides the[~~To provide~~] basis for issuing[~~to issue~~] duplicate certificates.

Section 1. Request and Conditions. An architect who is registered in the Commonwealth of Kentucky may secure a duplicate certificate by **requesting a duplicate certificate and accompanying this request with the fee established by 201 KAR 19:085, Section 2(11)**[~~showing a legitimate need for such certificate and accompanying this request with the prescribed fee established by the board~~][~~of twenty-five (25) dollars~~].

T. REXFORD CECIL, Executive Director
For DAVID HEYNE, President
APPROVED BY AGENCY: December 9, 2008
FILED WITH LRC: January 15, 2009 at noon
CONTACT PERSON: Rex Cecil, 2624 Research Park Drive, Suite 101, Lexington, Kentucky 40511, phone (859) 246-2069, fax (859) 246-2431.

GENERAL GOVERNMENT CABINET
Kentucky Board of Architects
(As Amended at ARRS, April 14, 2009)

201 KAR 19:085. Fees.

RELATES TO: KRS 323.080, 323.110
STATUTORY AUTHORITY: KRS 323.080, 323.210(1)(b), (2), (3)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.080, 323.210(1)(b), (2), (3)(b) require[~~requires~~] the board to promulgate administrative regulations establishing fees for services. This administrative regulation establishes the deadline for paying the renewal fee and a fee schedule.

Section 1. License Renewal. (1) The renewal fee shall be due and paid before the first day of the year designated as the licensee's renewal period. Except as provided in subsection (3) of this section, a licensee failing to pay the renewal fee on or before the 30th day of August, of that designated year, who has not voluntarily surrendered his registration by that date, shall be guilty of violation of the law and his **or her** license shall be automatically revoked.

(2)(a) Except as provided by paragraph (b) of this subsection, a license shall be renewed, restored, or reinstated by July 1 of each calendar year.

(b) A license issued between January 1 and June 30 of a calendar year shall not be renewed until the following July 1.

(3)(a) During a period of active military duty, **a licensee in the military**[~~an architect in the service~~] may, upon written application to the board, be excused from paying the renewal fee until **the**[~~his~~] military service is terminated and **the licensee**[~~he~~] wishes to resume practice.

(b) An identification card or renewal certificate shall be issued upon notification of **the licensee's**[~~his~~] return from duty and payment of the current renewal fee.

(4)(a) An architect whose license has been revoked for failure to pay the renewal fee, who wishes to have his **or her** license reinstated, shall make a written request giving the reason why **the licensee**[he] neither surrendered his registration nor paid the fee within the time prescribed by law.

(b) Upon payment of the prescribed fees and acceptance by the board, **the**[his] license shall be reinstated.

(5)(a) The application for license renewal shall include a signed affidavit that the licensee has not been in violation of the professional practice standards stated in 201 KAR 19.095.

(b) Failure to sign the affidavit shall be cause for the renewal application to be rejected.

Section 2. Fee Schedule. (1) Application for admission to the Architect Registration Examination - $100.

(2) Reapplication for admission to the Architect Registration Examination after original application has expired - $100.

(3) For a license certificate after passing of examination - twenty-five (25) dollars.

(4) Application for restoration of a voluntarily surrendered license - $150.

(5) Application for a license by reciprocity with another state or country - $200.

(6) Application for reinstatement of license revoked for failure to pay renewal fee, or suspended by the board; renewal fees from date of revocation plus - $150.

(7)(a) Annual renewal fee for a license renewal submitted and received before July 1: $125 [annually].

(b) Annual renewal fee for a license renewal submitted and received on or after July 1 and before August 1: $150

(c) Annual renewal fee for a license renewal submitted and received on or after August 1 and before August 30: $175.

(8) Annual renewal fee for an emeritus architect fifty (50) dollars

(9) Certifying the active license of a registrant to the licensing agency of another jurisdiction: twenty-five (25) dollars.

(10) Administrative fee of twenty-five (25) dollars for failure to notify the board of change of an address, telephone number, email address or employment within thirty (30) days of the change.

(11) Administrative fee of twenty-five (25) dollars for duplicate documents, including renewal forms, wallet cards, or wall certificates

(12)[(8)](a) A fee shall not be refunded.

(b) Each payment shall be by check made payable to "Kentucky State Treasurer."

(c) Each check shall be certified except those for the renewal fee.

Section 3 Charges for Examination. (1) An applicant shall register with and pay the cost of taking the examination directly to the designated testing service.

(2) The **examination fee shall be paid**[charges shall be made] each time the examinations are taken and shall not be refunded.

T. REXFORD CECIL, Executive Director
For DAVID HEYNE, President
APPROVED BY AGENCY: December 9, 2008
FILED WITH LRC: January 15, 2009 at noon
CONTACT PERSON: Rex Cecil, 2624 Research Park Drive, Suite 101, Lexington, Kentucky 40511, phone (859) 246-2069, fax (859) 246-2431.

GENERAL GOVERNMENT CABINET
Kentucky Board of Architects
(As Amended at ARRS, April 14, 2009)

201 KAR 19:087. Continuing education.

RELATES TO KRS 323 110(1), 323.120(1)(g), 323.210(3)
STATUTORY AUTHORITY: KRS 323 210(2), (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323 210(3) authorizes the board to establish continuing education requirements. This administrative regulation establishes continuing education requirements **and to establish standards for the licensing of an architect emeritus** for board licensees **and the standards for licensure as an architect emeritus**.

Section 1. Definitions. (1) "Elective topic" means an additional topic of interest to the registrant that is related to the practice of architecture.

(2) "Professional development unit" or "PDU" means a:

(a) Unit equal to fifty (50) minutes clock time for the taking of an examination; or

(b) Customary time of completion prescribed by an examination vendor, if the board finds the time to be reasonable.

(3) "Relevant topic" means an area which is particularly focused on the health, safety, and welfare of the public.

(4) "Self-directed activity" means:

(a) An unstructured self-study visit to an architecturally significant site;

(b) A professional service to the public which draws on the registrant's expertise as an architect; or

(c) A business practice course related to new technology, offered by a person qualified by education or experience.

(5) "Structured activity" means a:

(a) College or university sponsored course;

(b) Seminar;

(c) Tutorial;

(d) Short course; or

(e) Professional or technical organization sponsored:

1. Program;

2. Course;

3. Self-study course, or

4. Monograph.

Section 2. Purpose. The purpose of this continuing education program is to insure that all registered architects remain informed on technical and professional subjects which the board deems appropriate to safeguard life, health, property and welfare of the public.

Section 3 Scope and Exemptions. (1) To annually renew his license, an architect registered in Kentucky shall comply with this administrative regulation unless he is exempted by one (1) of the following reasons:

(a) He is exempted as a first time registrant by:

1. Examination; or

2. Reciprocity;

(b) He has applied for or is reviewing as[is] an architect emeritus [status architect] who:

1. Is at least sixty-five (65) years old;

2. Has requested **architect** emeritus status at the beginning of the license renewal period; and

3. Has retired from practice in all jurisdictions and is not **conducting**[maintaining] an active practice in any jurisdiction;

(c) He is a civilian who serves on active duty in the United States Armed Forces for a period of time exceeding ninety (90) consecutive days during the annual report period;

(d) He is a registrant of another National Council of Architectural Registration Board's jurisdiction that has a required continuing education program, if:

1. It accepts Kentucky requirements to satisfy its continuing education requirements; and

2. The registrant certifies that all requirements for current continuing education compliance and registration have been met in that jurisdiction.

(2) A hardship case may be considered by the board.

Section 4. Requirements. (1) A registered Kentucky architect shall:

(a) Obtain a total of twelve (12) PDU's per year; and

(b) Report these credits as a condition for registration renewal.

(2) The continuing education requirement of subsection (1) of this section shall be satisfied during the period beginning July 1 and ending June 30 of the following year.

(3) A minimum of eight (8) PDU's shall consist of structured

activities, addressing the following relevant topics:

(a) Codes, statutes, and administrative regulations governing the practice of architecture;

(b) Environmental issues;

(c) Code of ethics;

(d) State registration law;

(e) Design proficiency;

(f) New technology, including construction:

1. Material;
2. Methods;
3. Systems; or
4. Concepts;

(g) Interface, other than normal day-to-day contact, with other design disciplines, including a:

1. Planner;
2. Consultant;
3. Specialist; or
4. Financier;

(h) Legal aspects, including:

1. Contract documents;
2. Insurance;
3. Bonds; and
4. Project administration;

(i) Specialization in:

1. Presentation;
2. Adaptive reuse; or
3. A building type; and

(j) Study or consultation opportunity.

(k) A passing score on the LEED Accredited Professional Examination shall qualify for eight (8) PDU's under this requirement.

(4) A maximum of four (4) PDU's may consist of self-directed activities, addressing the following elective topics:

(a) Business or practice efficiency,

(b) Business development;

(c) Personal skills;

(d) New skills; or

(e) General education.

Section 5. Reporting and Recordkeeping. (1) The following shall be submitted for renewal of a license:

(a) A Continuing Education Annual Report Form listing the completed courses;

(b) A renewal application; and

(c) The renewal fee.

(2) An incomplete submission shall be returned to the registrant.

(3) A random sample of annual reports shall be reviewed to ensure accuracy and compliance.

(4) The registrant shall.

(a) Be responsible for retaining proof of participation in continuing education activities;

(b) Retain a record for continuing education for a period of two (2) years from the date of submission of the annual report to the board; and

(c) Furnish copies or continuing education records on the request of the board for audit purposes.

(5) Proof of participation in continuing education activities shall include:

(a) A log showing the:

1. Activity claimed;
2. Sponsoring organization;
3. Location, and
4. Duration;

(b) An attendance certificate,

(c) A signed attendance receipt;

(d) A paid receipt;

(e) A list of attendees signed by a person in charge of the activity; and

(f) Similar documentation.

(6) Disallowances. If continuing education credit is disallowed,[.] the registrant shall have thirty (30)[~~180~~] calendar days after notification to:

(a) Substantiate the original claim; or

(b) Earn other continuing education credit to meet the minimum requirements.

Section 6. Noncompliance and Sanctions. Failure to fulfill the continuing education requirements or file the required annual report, properly completed and signed, shall result in nonrenewal of the architect's certificate of registration.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Education Annual Report Form", (2008[~~3/13/1998~~] Edition), Kentucky[~~State~~] Board of [~~Examiners and Registration of~~] Architects; and

(b) "License Renewal Application Form", (2008[~~5/98~~] Edition), Kentucky[~~State~~] Board of [~~Examiners and Registration~~] of Architects.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Architects, Spindletop Administration Building, 2624 Research Park Drive, Suite 101, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30[4] p.m.

T. REXFORD CECIL, Executive Director

For DAVID HEYNE, President

APPROVED BY AGENCY: December 9, 2008

FILED WITH LRC: January 15, 2009 at noon

CONTACT PERSON: Rex Cecil, 2624 Research Park Drive, Suite 101, Lexington, Kentucky 40511, phone (859) 246-2069, fax (859) 246-2431.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for Marriage and Family Therapists
(As Amended at ARRS, April 14, 2009)

201 KAR 32:020. Equivalent course of study.

RELATES TO: KRS 335 330(1), (2)

STATUTORY AUTHORITY: KRS 335.320(9), 335.330(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330(1)[~~335 330(3)~~] provides that the board shall define a course of study equivalent to a master's degree in marriage and family therapy and promulgate the equivalency standard by administrative regulations. This administrative regulation establishes[~~defines~~] the criteria for the equivalent course of study.

Section 1. An applicant for licensure as a marriage and family therapist shall:

(1) Comply with the requirements of KRS 335.330; and

(2) Submit an application on the [~~"~~]Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate[~~"~~] form, incorporated by reference in 201 KAR 32:025.

(3) An applicant completing a postgraduate degree program, masters degree program, or doctoral degree program accredited by the Commission on Accreditation of Marriage and Family Education who also has completed a masters or doctoral degree program in a related field, such as psychology, clinical psychology, community mental health, social work, professional counseling, or other degrees approved by the board based on relevancy, prior to entering the applicant's board based on relevancy, prior to entering the applicant's current COAMFTE accredited program, in addition to what is required by KRS 335. 330(1), may count experiential and clinical supervision hours earned in a Commission on Accreditation of Marriage and Family Education postgraduate degree program, masters degree program, or doctoral degree program towards meeting the experiential and clinical supervision requirements for licensure pursuant to KRS 335.330(2).[~~who has completed a Commission on Accreditation of Marriage and Family Education masters or doctoral degree program in a related field such as psychology, clinical psychology, community mental health, social work, professional counseling, or other degree approved by the board, in addition to what is required in KRS 335 330(1), may count experiential and clinical supervision~~

~~hours earned in a Commission on Accreditation of Marriage and Family Education masters or doctoral degree program towards meeting the experiential and clinical supervision requirements for licensure per KRS 335.330(2).]~~

Section 2. The basic core areas **that**[~~which~~] are necessary in order to qualify as an equivalent course of study, shall include the following:

(1) Marriage and family studies This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours, or 135 didactic contact hours). Courses in this area shall be theoretical in nature and have a major focus of system theory orientation, and may include:

(a) Systems theory;

(b) Family development;

(c) Blended families;

(d) Cultural issues in families;

(e) Family subsystems;

(f) Major models of family systems theory; or

(g) Gender issues in families;[.]

(2) Marriage and family therapy. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours, or 135 didactic contact hours). Courses in this area shall have a major focus on family systems theory and systemic therapeutic interventions. Courses shall relate to major theories of family systems change and therapeutic practices evolving from each theoretical model. Examples[~~may~~] include.

(a) Structural communications family therapy;

(b) Strategic object relations family therapy;

(c) Behavioral family therapy;

(d) Intergenerational family therapy;

(e) Solution oriented family therapy;

(f) Narrative family therapy; **and**[~~or~~]

(g) Systemic sex therapy;[.]

(3) Human development. This area shall include a minimum of three (3) courses (nine (9) semester hours, twelve (12) quarter hours, or 135 didactic contact hours). Courses in this area **shall** provide knowledge of individual human personality development in both normal and abnormal manifestations. Topic areas[~~may~~] include**, for example**:

(a) Human development;

(b) Personality theory;

(c) Human sexuality, **and**[~~or~~]

(d) Effects of gender and cultural issues on human development;[.]

(4) Psychopathology and Diagnostic and Statistical Manual of Mental Disorders. This area shall include a one (1) course minimum (three (3) semester hours, four (4) quarter hours, or forty-five (45) didactic contact hours). Courses in this area **shall include**[~~should cover~~] psychopathology, diagnosis through use of the Diagnostic and Statistical Manual of Mental Disorders, or applications of the Diagnostic and Statistical Manual of Mental Disorders to marriage and family therapy;[.]

(5) Professional studies. This area shall include a minimum of one (1) course minimum (three (3) semester hours, four (4) quarter hours, or forty-five (45) didactic contact hours) Courses [~~may~~] include**, for example**:

(a) Professional ethics in marriage and family therapy;

(b) Legal responsibilities of the therapist,

(c) Professional socialization and the role of the professional organization;

(d) Licensure or certification legislation; **and**[~~or~~]

(e) Independent practice issues;[.]

(6) Research. This area shall include a minimum of one (1) course minimum (three (3) semester hours, four (4) quarter hours, or forty-five (45) didactic contact hours). Courses may include:

(a) Statistics;

(b) Research methods;

(c) Quantitative methodology; or

(d) Other courses designed to assist the student to understand and perform research; **or**[.]

(7) Practicum or internship. The practicum or internship shall include a minimum of one (1) year or 300 hours of supervised direct client contact with individuals, couples, and families for family therapy.

(a) Applicants who did not complete a clinical practicum in graduate school may satisfy the practicum requirement with their first 300 post masters' client contact hours.

(b) These hours shall not be counted toward the two (2) years of required post master's experience or the 200 hours of clinical supervision

Section 3. A course used to fulfill one (1) of the requirements **established**[~~set forth~~] in Section 2 of this administrative regulation shall not be used to fulfill more than one (1) of the basic core area requirements.

Section 4. (1) Applicants who completed **a**[~~their~~] qualifying graduate degree in a mental health field prior to 1985 may substitute conferences, workshops, seminars, or in-service training related to marriage and family therapy attended or presented as a substitute for college coursework required in Section 2 of this administrative regulation.

(2) Forty-five (45) contact hours of relevant content shall equal three (3) semester hours of credit

(3) A list of equivalencies the applicant wishes to have considered shall be organized by core area as **established**[~~set forth~~] in Section 2 of this administrative regulation.

(4) Appropriate documentation shall include:

(a) Date;

(b) Title;

(c) Course description;

(d) Sponsoring organization;

(e) Presenter, including presenter's qualifications;

(f) Number of contact hours attended or presented; and

(g) Certificates of attendance.

Section 5. Other acceptable equivalencies **shall**[~~may~~] be considered as follows:

(1) One (1) graduate level course taught on a subject relevant to marriage and family therapy after 1985 **shall**[~~may~~] be considered equivalent to three (3) semester hours of credit.

(2) Publication on a subject relevant to marriage and family therapy dated after 1985 may be submitted as equivalencies as acceptable to the board. Credit shall be granted as follows:

(a)**1.** A chapter in a book is equivalent to three (3) semester hours of credit.

2. An applicant who authors or edits a book **shall**[~~may~~] be given credit equivalent to six (6) semester hours of credit.

3. An applicant shall submit a copy of the title page, table of contents, and bibliography.

(b)**1.** Publication in a professional refereed journal **shall be** [~~is~~] equivalent to three (3) semester hours of credit.

2. An applicant shall submit the journal table of contents and a copy of the article as it appeared in the journal including bibliography.

Section 6 Clinical membership in the American Association for Marriage and Family Therapy plus documentation of coursework in psychopathology and the Diagnostic and Statistical Manual of Mental Disorders shall be accepted as evidence that the applicant has met both the educational and experiential requirements for licensure as **established**[~~set forth~~] in KRS 335.330(3) and (4)(a) and (b).

This is to certify that the Chair of the Kentucky State Board of Licensure for Marriage and Family Therapists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

ANTHONY A. WATKINS, Chair

APPROVED BY AGENCY. November 19, 2008

FILED WITH LRC: November 19, 2008 at 2 p m.

CONTACT PERSON Barbara Rucker, Administrative and Support Services Supervisor, Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for Marriage and Family Therapists
(As Amended at ARRS, April 14, 2009)

201 KAR 32:025. Marriage and family therapist associate.

RELATES TO: KRS 335 332
STATUTORY AUTHORITY: KRS 335.320(9), 335.332(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 335 332(3) requires the board to promulgate administrative regulations establishing the fees and other requirements for a marriage and family therapist associate permit. This administrative regulation establishes the requirements for marriage and family therapist associates.

Section 1. Marriage and Family Therapist Associate Application and Renewal. (1)(a) A person desiring to be a marriage and family therapist associate shall apply for and submit to the board an [“]Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate[”] with a fee of fifty (50) dollars for the first year.

(b) The initial application shall include a copy of a supervisory contract with the designated supervisor for approval by the board.

(2)(a) An annual renewal fee of fifty (50)[twenty-five (25)] dollars for each subsequent year shall be submitted to the board.

(b) Contract renewal and extension shall be granted in accordance with Section 4 of this administrative regulation.

(3) An associate desiring to renew **a**[his] permit shall file a completed [“]Associate Permit Renewal Form[”] and the completed supervision log to accompany the fee **established**[set forth] in subsection (2) **of this section**[above]

(4) **An associate who fails to renew his or her**[Associates who fail to renew their permit before their] expiration date shall have thirty (30) days to pay the renewal fee of fifty (50) dollars plus a late fee of twenty (20) dollars for a total of seventy (70) dollars

(a) The fee shall be postmarked on or before the end of the thirty (30) day grace period in accordance with the expiration date indicated on the renewal form.

(b) Failure to renew the permit in a timely manner as **established in this subsection**[set forth above] shall result in termination of the permit

Section 2. Supervisory Contract. (1) Prior to beginning a course of supervision for the purpose of meeting licensure requirements, a marriage and family therapist associate shall contract with an approved supervisor in writing

(2) The approved supervisor shall enter into a [“]Plan of Supervision for Clinical[Marriage and Family Therapy] Experience[”] with a person who meets the criteria for becoming a marriage and family therapist associate.

(3) The approved supervisor shall be responsible for the marriage and family therapist associate's development and the welfare of the clients served by the marriage and family therapist associate in accordance with the code of ethics **established**[set forth] in 201 KAR 32 050 and the provisions in 201 KAR 32:035

(4) If a new supervisory contract is entered into with a different supervisor, approval shall be obtained from the board.

(5)(a) **If**[When] a supervision contract is terminated, the approved supervisor **shall, within**[has] thirty (30) days,[to] notify the board in writing that **he or she** is no longer the supervisor of record

(b) The marriage and family therapist associate has thirty (30) days from the date of termination to submit the new supervisory contract to the board.

Section 3. Contract Information. The supervisory contract between the marriage and family therapist associate and the approved supervisor shall contain the following information:

(1) The name of the marriage and family therapist associate;

(2) The name and license number of the approved supervisor of record,

(3) The name and license number of other approved supervisors;

(4) The agency, institution, or organization where the experience will be received;

(5) A detailed description of the nature of the practice including the type of:

(a) Clients to be seen;

(b) Therapies and treatment modalities **that**[which] shall be used including the prospective length of treatment; and

(c) Problems or conditions **that**[which] shall be treated;

(6) The nature, duration, and frequency of the supervision, including the:

(a) Number of hours of supervision per week;

(b) Amount of group and individual supervision; and

(c) Methodology for transmission of case information;

(7) The conditions or procedures for termination of the supervision; and

(8) A statement that:

(a) The approved supervisor of record understands that he **or she** shall be[held] accountable to the board for the care given to the marriage and family therapist associate's clients; and

(b) The approved supervisor of record and other supervisors meet the criteria established in **201 KAR Chapter 32**[existing administrative regulations]

Section 4. Contract Renewal and Extension. (1) Upon approval of the board, a supervisory contract shall be issued for a term of one (1) year [three (3) years.

(2) At the conclusion of the original three (3) year term, the marriage and family therapist associate may request that a supervisory contract be renewed for a period of one (1) year.

(3) If a marriage and family therapist associate is unable to complete the requirements of the contract and wishes to retain his permit, he shall request a one (1) year extension.

(4)] There shall not be a limit on the number of extensions that may be granted a marriage and family therapist associate.

(3) **Upon**[At the time of] associate permit renewal, the supervisory contract shall be reaffirmed by written correspondence from the supervisor of record or a new supervisor contract **shall be** supplied by the applicant.

Section 5. [Clinical Supervision. (1) Clinical supervision shall

(a) Be equally distributed throughout the qualifying period;

(b) Be clearly distinguishable from psychotherapy, didactic enrichment or training activities;

(c) Focus on raw data from the supervisee's current clinical work made available to the supervisor, and

(d) Be direct, face-to-face contact between the supervisor and supervisee.

(2) The supervision process shall focus on.

(a) Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as set forth in the Diagnostic and Statistical Manual of Mental Disorders,

(b) Development of treatment skills appropriate to the therapeutic process,

(c) Development of sensitivity to context and issues relating specifically to the family or individual being counseled,

(d) Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;

(e) Increased theoretical and applied knowledge for the therapist;

(f) Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy, and

(g) Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

(3) Oral and written reports shall not constitute more than fifty (50) percent of raw data used for direct, face-to-face clinical super-

~~vision.~~

~~(4) Interactive video shall not exceed fifty (50) hours raw data used for direct, face to face.~~

~~(5) Any alternative format of direct, face to face clinical supervision shall receive prior approval of the board.~~

~~(6) Groups of up to six (6) persons, behind a one (1) way mirror, may receive credit for group supervision if an approved supervisor is present and students are actively participating in the session. Up to two (2) students seeing a client on the other side of the one (1) way mirror may concurrently receive client contact and individual supervision hours if the approved supervisor is actively supervising the session.~~

~~(7) In a therapy session involving a supervisor and supervisee:~~

~~(a) The roll of the approved supervisor as a supervisor or co-therapist shall be clearly defined prior to beginning a therapy session.~~

~~(b) The supervisees may receive credit for client contact hours and supervision hours.~~

~~(8) An individual supervisee may present a videotape in group supervision with an approved supervisor. The individual supervisee may receive group supervision hours if not more than five (5) additional students are present. The additional students may also receive group supervision credit if they are actively involved in the process.~~

~~Section 6.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Marriage and Family Therapist or Marriage and Family Therapist Associate", 2009[~~(2008 Edition)~~][~~(6/17/99 Edition)~~]; and

(b) "Plan of Supervision for Clinical[~~Marriage and Family Therapy~~] Experience", [~~(~~]2008 [~~Edition)~~][~~Revised 5/07/04~~];

(c) "Associate Permit Renewal Form," [~~(~~]2008; [~~Edition),~~] and

(d) "Marriage and Family Therapist Associate Supervision Log", [~~(~~]2008 [~~Edition)~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board of Licensure for Marriage and Family Therapists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

ANTHONY A. WATKINS, Chair

APPROVED BY AGENCY: November 19, 2008

FILED WITH LRC: November 19, 2008 at 2 p.m.

CONTACT PERSON: Barbara Rucker, Administrative and Support Services Supervisor, Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for Marriage and Family Therapists
(As Amended at ARRS, April 14, 2009)

201 KAR 32:030. Fees.

RELATES TO: KRS 335.330, 335.340(1), (3)

STATUTORY AUTHORITY: KRS 335.320(4), 335.330, 335.340(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: [~~This administrative regulation sets all fees for licensees as a marriage and family therapist and marriage and family therapist associate.~~] KRS 335.330 requires the board to promulgate an administrative regulation establishing the initial fee for licensure required to be paid by an applicant for licensure and requires an applicant to pass a written examination prescribed by the board. KRS 335.340(1) requires that all licenses issued under KRS 335.330 shall be renewed annually, and that the board promulgate an administrative regulation establishing the fee for licensure renewal.[~~KRS 335.320(4) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 335.~~] KRS 335.340(3) requires the board to promulgate an administrative regulation establishing the late renewal fee. **This administrative regulation establishes fees for licensure as a marriage and family therapist or marriage and family therapist associate.**[~~KRS 335.340(3) requires the board to establish procedures for reinstatement of expired licenses.~~]

Section 1. Initial Application Fee. The initial application fee for licensure as a marriage and family therapist shall be:

(1) Fifty (50) dollars;

(2) Nonrefundable; and

(3) Payable[~~. Said fee is nonrefundable and shall be paid by check or money order made payable~~] to the Kentucky State Treasurer.

Section 2. Initial Licensure Fee. The initial fee for licensure as a marriage and family therapist shall be:

(1) $175;

(2) Nonrefundable; and

(3) Payable[~~$175. Said fee is nonrefundable and shall be paid by check or money order made payable~~] to the Kentucky State Treasurer[~~$150~~].

Section 3. Examination Fee. **(1)** An applicant shall pass the ["]National Marital and Family Therapy Examination["] administered and verified by Professional Examination Service.

(2) The applicant shall pay the required examination fee directly to Professional Examination Service.

Section 4. Renewal Fee. **(1) A licensed marriage and family therapist shall submit a completed Marriage and Family Therapist License Renewal Application**[~~license renewal application form~~] to the board in accordance with KRS 335.340.

(2) The fee for renewal of licensure as a marriage and family therapist shall be:

(a) $150[~~$110~~] annually;

(b) Nonrefundable; and

(c) Payable[~~Said fee is nonrefundable and shall be paid by check or money order payable~~] to the Kentucky State Treasurer.

Section 5. Late Renewal Fees. **(1) A**[~~Any~~] licensee who renews **a**[~~his~~] license during the ninety (90) day grace period provided by KRS 335.340(3) shall pay a late renewal fee of **seventy-five (75)**[~~fifty (50)~~] dollars in addition to the payment of the renewal fee as **established** [~~set forth~~] in Section 4 of this administrative regulation.

(2) The fee shall be:

(a) Nonrefundable; and

(b) Payable[~~Said fee is nonrefundable and shall be paid by check or money order payable~~] to the Kentucky State Treasurer.

Section 6. Reinstatement of Expired License. (1) An expired license **shall**[~~may~~] be reinstated by:

(a) Submitting a completed ["]License Reinstatement **Application**[~~form~~"];

(b) **Paying**[~~Payment~~] of the renewal fee as **established**[~~set forth~~] in Section 4 of this administrative regulation for each year since the date of last active licensure;

(c)**Paying**[~~Payment~~] of a reinstatement fee of $100**, which shall be:**

1. Nonrefundable; and

2. Payable[~~. Said fee is nonrefundable and shall be paid by check or money order payable~~] to the Kentucky State Treasurer; and

(d) Meeting all other requirements of this section **of this administrative regulation**.

(2) The applicant for reinstatement of an expired license shall

submit proof of completion of fifteen (15) hours of continuing education for each year since the date of last active licensure.

Section 7. Fees for Sponsors of Continuing Education. (1) There shall be a fee of twenty-five (25) dollars for each continuing education application submitted by a sponsor.

(2) For a sponsor[~~For sponsors~~] submitting multiple applications in one (1) month, the fee shall not exceed $250

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Marriage and Family Therapist License Renewal Application", 2009;[~~"License Renewal Application", (2008); and~~]

(b) "License Reinstatement Application", 2009; and

(c) "Application for Continuing Education Program Approval", 2009[~~(2008)~~] [~~"License Reinstatement Form" (2001) Kentucky Board of Licensure for Marriage and Family Therapists, is incorporated by reference.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board of Licensure for Marriage and Family Therapists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

ANTHONY A. WATKINS, Chair

APPROVED BY AGENCY: November 19, 2008

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CONTACT PERSON: Barbara Rucker, Administrative and Support Services Supervisor, Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for Marriage and Family Therapists
(As Amended at ARRS, April 14, 2009)

201 KAR 32:035. Supervision of Marriage and Family Therapist Associates.

RELATES TO: KRS 335.320(6), 335.332

STATUTORY AUTHORITY: KRS 335.320 (4), [~~and~~] (5)

NECESSITY FUNCTION AND CONFORMITY: KRS 335.320(4) requires the board to license applicants who satisfy the experience and educational requirements and who have paid the[~~their~~] fee. KRS 335.320(5) requires the board to review and approve supervision contracts between marriage and family therapy associates and their approved supervisors. This administrative regulation establishes the supervision requirements for marriage and family therapy associates and their board-approved supervisors.

Section 1. Definitions. (1) "Group supervision" means supervision of more than two (2) supervisees with the supervisor.

(2) "Qualified mental health professional" means a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker

(3) "Raw data" means video-taped sessions, live observation, or co-therapy with a board-approved supervisor.

Section 2. Qualifications for Board-Approved Supervisors (1) Effective July[~~January~~] 1, 2010, [~~the following qualifications shall be necessary to become~~] a board-approved supervisor shall be:

(a) An American Association of Marriage and Family Therapists (AAMFT)[~~AAMFT~~] approved supervisor in good standing; [~~or~~]

(b) An AAMFT supervisor candidate; [~~or~~]

(c) A marriage and family therapist licensed in Kentucky and in good standing with a minimum of five (5) years of experience in the practice of marriage and family therapy; or

(d) A person licensed and in good standing with a minimum of five (5) years of experience as a marriage and family therapist in another state, and who meets the licensure requirements for Kentucky.

(2) In order to obtain initial board-approved supervisor status, an applicant who is not an AAMFT supervisor[~~all applicants who are not American Association of Marriage and Family Therapists (AAMFT) supervisors~~] in good standing, shall provide proof of completion of six (6) hours of licensure board-approved continuing education courses in supervision.

(a) The course shall[~~The courses must~~] be taken within the two (2) years preceding the date of application to become a board-approved supervisor.

(b)[~~(a)~~] This requirement shall be in addition to the fifteen (15) hours of continuing education required by 201 KAR 32:060.

(c) The approved courses may be live or online and shall include:

1.[~~(b) Said approved courses shall include, but not be limited to,~~] Kentucky law governing the practice of marriage and family therapy, both administrative regulations and statutes;

2.[~~,~~] Theories of supervision;

3.[~~,~~] Ethical issues involved in supervision; and

4.[~~,~~] Supervisor responsibilities such as logs, treatment, planning and recording [~~Courses may be attended live or online.~~]

(3) Board-approved supervisor annual renewal requirements.

(a) AAMFT approved supervisors shall complete one (1) hour live or online of continuing education every year in Kentucky law governing the practice of marriage and family therapy.[~~Courses may be attended live or online.~~] This requirement shall be included in the fifteen (15) hours of continuing education required by 201 KAR 32:060

(b)1. Non-AAMFT approved supervisors shall complete two (2) hours of continuing education in supervision every year, to maintain board-approved supervisor status. This requirement shall be included in the fifteen (15) hours of continuing education required by 201 KAR 32:060.

2. The approved courses may be live or online and shall include:

a.[~~Said approved courses shall include, but not be limited to,~~] Kentucky law governing the practice of marriage and family therapy, both administrative regulations and statutes;

b. [~~,~~]Theories of supervision;

c. [~~,~~]Ethical issues involved in supervision; and

d. [~~,~~]Supervisor responsibilities such as logs, treatment, planning and recording [~~Courses may be attended live or online.~~]

Section 3.[~~2.~~] Clinical Supervision. (1) Clinical supervision shall.

(a) Be equally distributed throughout the qualifying period and[~~. Supervision~~] shall average at least four (4) hours per month as specified in the supervision contract,

(b) Be clearly distinguishable from psychotherapy, didactic enrichment, or training activities;

(c) Focus on raw data from the supervisee's current clinical work; and

(d) Be direct, face-to-face contact between the supervisor and supervisee, unless an alternative form of supervision has been approved by the board based on undue burden for the supervisor or supervisee[~~Any alternative format of direct, face-to-face clinical supervision shall receive prior approval of the board~~].

(2) The supervision process shall focus on:

(a) Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as established[~~set forth~~] in the Diagnostic and Statistical Manual of Mental Disorders;

(b) Development of treatment skills appropriate to the therapeutic process;

(c) Development of sensitivity to context and issues relating specifically to the family or individual being counseled;

(d) Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;

(e) Increased theoretical and applied knowledge for the therapist;

(f) Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and

(g) Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

Section 4.[3.] Standards for Raw Data Used for Supervision. [For purposes of this section raw data shall be defined as the use of video-taped sessions, live observation, or co-therapy with a board-approved supervisor.] The use of raw data in a supervision session shall constitute a minimum of fifty (50) hours of the 200 hours of required supervision.

Section 5.[4.] In a therapy session involving a board-approved supervisor and supervisee:

(1) The role of the board-approved supervisor as a supervisor or co-therapist shall be clearly defined prior to beginning a therapy session; and

(2) The supervisees shall[may] receive credit for client contact hours and supervision hours.

Section 6.[5.] Documentation Requirements. (1) The board-approved supervisor and marriage and family therapist associates shall maintain a supervision log which shall document.

(a) The frequency and type of supervision provided; and

(b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.

(2) No more than 100 hours of supervision hours may take place in group supervision. For purposes of this administrative regulation, individual supervision consists of one (1) or two (2) supervisees with a supervisor.

Section 7.[6.] Number of Supervisees. (1) A board-approved supervisor shall not have more than six (6) marriage and family therapist associates under supervision at any one (1) time.

(2) Requests to supervise marriage and family therapist associates in excess of six (6) shall be submitted to the board for approval and shall demonstrate in writing the supervisor's plan and ability to add to the current supervisory load.

Section 8.[7.] Temporary Supervision. (1) In extenuating circumstances, If[when] a marriage and family therapist associate is without supervision, the associate may continue working up to ninety (90)[thirty (30)] calendar days under[agency] supervision of a qualified mental health provider while appropriate board-approved supervision is sought and a new supervision contract is submitted to the board. Extenuating[Qualified mental health professional for purposes of this administrative regulation is defined as a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker. For purposes of this administrative regulation extenuating] circumstances include situations such as[, but are not limited to,] death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, and or the termination of the supervisor's employment.

(2)1. The supervisee shall notify the board of these circumstances and shall submit, in writing, a plan for resolution of the situation within thirty (30) calendar days of change in status of board-approved supervision.

2. The written plan shall include:

a. The name of the temporary supervisor;

b. Verification of the credential held;

c. An address; and

d. A telephone number.[It shall be the responsibility of the supervisee to notify the board and supervisee of these circumstances and to submit in writing a plan for resolution of the situation when a supervision contract is terminated. The supervisor shall notify the board and supervisee within thirty (30) days in writing.]

Section 9. [8.] Board-approved Supervisor's Responsibilities to Clients and Supervisees. (1) A board-approved supervisor shall be responsible for ensuring the proper and appropriate delivery of marriage and family therapy services to clients.

(2) A board-approved supervisor shall be responsible for fostering the professional competence and development of the marriage and family therapist associates under his or her supervision.

(3) A board-approved supervisor shall be responsible for compliance with the code of ethics established[set forth] in 201 KAR 32:050 and take steps to ensure that[his] supervisees comply with the code of ethics as well.

Section 10. Incorporation by Reference. (1) "Diagnostic and Statistical Manual of Mental Disorders", 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board of Licensure for Marriage and Family Therapists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS Chapter 335.

ANTHONY A. WATKINS, Chair

APPROVED BY AGENCY: November 19, 2008

FILED WITH LRC: November 19, 2008 at 2 p.m.

CONTACT PERSON: Barbara Rucker, Administrative and Support Services Supervisor, Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Licensure for Marriage and Family Therapists
(As Amended at ARRS, April 14, 2009)

201 KAR 32:070. Complaint procedure.

RELATES TO KRS 335.305(1), 335.348, 335.350, 335.399[335.348]

STATUTORY AUTHORITY: KRS 335.320(9), 335.325[, 335.350]

NECESSITY, FUNCTION, AND CONFORMITY. KRS 335.320(9) requires the Kentucky State Board of Licensure for Marriage and Family Therapists to promulgate administrative regulations to implement KRS Chapter 335[335.348 delineates the causes for which disciplinary action may be taken against a licensee] This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions. (1) "Chairman" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as defined[established] in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 335 or 201 KAR Chapter 32[; the administrative regulations promulgated thereunder; or any other state or federal statute or regulation].

(3) "Complaint" means a[any] written allegation of misconduct by a credentialed individual or other person that may[which might] constitute a violation of KRS Chapter 335 or 201 KAR Chapter 32[, the administrative regulations promulgated thereunder, or any

~~other state or federal statute or regulation~~].

(4) "Complaint screening committee" means a committee consisting of three (3) persons on the board appointed by the chairman of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint, and in addition to board members, the executive director of the board or another staff member may be appointed to serve on this committee.

(5) "Formal complaint" means a formal administrative pleading authorized by the board **that**[~~which sets forth~~] charges[~~against~~] a licensed individual or other person **with an alleged violation** and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(7) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2. Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;

2. Organization; or

3. Entity;[.]

(b) Shall be:

1. In writing **using the Complaint Form and Instructions**; and

2. Signed by the person offering the complaint; **and**[.]

(c) May be filed by the board based upon information in its possession.

(2) Upon receipt of a complaint:

(a)**1.** A copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint.

2. The individual shall **have**[~~be allowed~~] a period of twenty (20) days from the date of receipt to submit a written response.

(b)**1.** Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant.

2. The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 3. Initial Review. (1)**(a)** After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available and make a recommendation to the board.

(b) The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:

(a) Authorize an investigation into the matter; and

(b) Order a report to be made to the complaint screening committee[~~at the earliest opportunity~~].

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint.

(a) The committee shall review the investigative report and make a recommendation to the board.

(b) The board shall determine whether there has been a[~~prima facie~~] violation of KRS Chapter 335 or **201 KAR Chapter 32**[~~the administrative regulations promulgated thereunder~~] and a complaint **shall**[~~should~~] be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a violation has occurred but is not serious, the board **shall**[~~may~~] issue a written admonishment to the licensee.

(a) A copy of the written admonishment shall be placed in the permanent file of the licensee.

(b)1. The licensee shall have the right to file a response in writing to the admonishment within thirty (30) days of its receipt and may have it placed in his permanent file.

2.a. Alternatively, the licensee may file a request for a hearing with the board within thirty (30) days of the admonishment.

b. Upon receipt of the request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(4) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the complaint screening committee shall prepare a formal complaint **that**[~~which~~] states clearly the charge or charges to be considered at the hearing.

(a) The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(b) The formal complaint shall be processed in accordance with KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 335 305(1), it shall:

(a) Order the individual to cease and desist from further violations of KRS 335.305(1);

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335 305(1) with a request that appropriate action be taken **pursuant to**[~~under~~] KRS 335.399; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335 305**(1)**.

Section 5. Settlement by Informal Proceedings. (1) The board through counsel and the complaint screening committee may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 6. Notice and Service of Process. A notice required by KRS Chapter 335 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 7. Notification. The board shall make public:

(1) Its final order in a disciplinary action **pursuant to**[~~under~~] KRS 335.350 with the exception of a written admonishment issued pursuant to Section 4(3) of this administrative regulation; and

(2) An action to restrain or enjoin a violation of KRS 335.305(1).

Section 8. Incorporation by Reference. (1) "Complaint Form and Instructions", **2009**[~~(2008), Kentucky Board of Licensure for Marriage and Family Therapists~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board of Licensure for Marriage and Family Therapists executes this administrative regulation prior to filing, pursuant to the authority granted by statute, and following a vote of approval by the Board as reflected in the Board's minutes. This administrative regulation is filed with the Legislative Research Commission as required by KRS Chapter 13A to carry out and enforce the provisions of KRS

Chapter 335.

ANTHONY A. WATKINS, Chair
APPROVED BY AGENCY: November 19, 2008
FILED WITH LRC: November 19, 2008 at 2 p.m.
CONTACT PERSON: Barbara Rucker, Administrative and Support Services Supervisor, Kentucky State Board of Licensure for Marriage and Family Therapists, 911 Leawood Drive, Frankfort, Kentucky 40601, phone (502) 564-3296 ext. 224, fax (502) 696-1899.

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, April 14, 2009)

302 KAR 16:010. Business identification number required[~~Permit for operation of amusement rides or amusement attractions in Kentucky~~].

RELATES TO: KRS [~~247.232,~~] 247.234[~~, 247.990~~]
STATUTORY AUTHORITY: KRS 247.234
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(2) requires[~~authorizes~~] the Commissioner of the Department of Agriculture to promulgate administrative regulations [~~establishing requirements~~] for the process of application for a business identification number[~~operation of amusement rides or attractions~~]. This administrative regulation establishes the criteria for obtaining a business identification number[~~an operating permit~~] to operate an amusement ride or attraction [~~in the Commonwealth of Kentucky~~].

Section 1. **Definition.**[~~Definitions. (1).~~] "Business Identification Number" means a number identifying the individual or business entity owner of an amusement ride or amusement attraction.

[~~(2) "Inspection fee" means the fee required to be paid prior to operation of any amusement ride or amusement attraction in Kentucky.~~] [~~"Inspection fee" means a fee required to be paid to operate any amusement ride or amusement attraction in Kentucky and established in 302 KAR 16:020~~

~~(2) "Operating permit" means a business identification number identifying the owners of an amusement ride or amusement attraction.~~]

Section 2. A business identification number[~~An operating permit~~] shall be required to operate an[~~for operating~~] amusement ride[~~rides~~] or amusement attraction[~~attractions~~] in this[~~the~~] state, [~~of Kentucky~~] and shall be valid for one (1) year from the date of issuance, **in accordance with KRS 247.234(3)(a).** A business identification number **shall**[~~may~~] not be transferred or assigned[~~renewed annually on or before January 1 of each year~~].

Section 3. Procedure for Obtaining a Business Identification Number[~~an Operating Permit~~]. (1) Every owner of an amusement ride or amusement attraction seeking[~~wishing~~] to operate in Kentucky shall submit [~~to the commissioner, or his designee,~~] an application for a business identification number along with the fee for each required initial safety inspection[~~an operating permit accompanied by the fee~~] required by 302 KAR 16:020.

(2)(a)The owner of the amusement ride or amusement attraction shall provide a written itinerary indicating:

1. The location of the first setup;

2. All future operating dates and locations, including addresses;

3. The operating period at each location; [~~and~~]

4. The names of all rides requiring initial safety inspections pursuant to KRS 247.234(2)(d); and

5. All rides or attractions being operated at each location.

(b) The itinerary shall be delivered to the department at least fourteen (14) days prior to the first scheduled setup and shall be updated in writing immediately **if**[~~when~~] cancellations are made or additional locations added.

(c) The itinerary **shall**[~~may only~~] be submitted in writing including by facsimile or electronic mail.

(3) Except as provided in subsection (4) of this section, the applicant shall provide proof of liability insurance in the amount of $500,000 per occurrence for bodily injury or death, for each amusement ride or amusement attraction.

(a) The proof of insurance shall include a statement that the insurer shall not cancel the policy without thirty (30) days written notice to the commissioner.

(b) Proof of insurance shall be either the policy or a certified statement issued by the insurer and shall include

1. A listing of all amusement rides and amusement attractions insured; or

2. A statement that all amusement rides and amusement attractions operated under the supervision of the insured are covered in the policy

(4) If the applicant's amusement rides or amusement attractions are permanently located or erected, he may, **instead** [~~in lieu~~] of providing proof of liability insurance, provide proof of financial responsibility in at least the amount of $500,000 on or before the date of the initial safety inspection. Proof of financial responsibility shall be shown by one (1) of the following methods:

(a) [~~Provide~~] Proof of liability insurance of $500,000 per occurrence for bodily injury or death;

(b) A financial statement, certified by a licensed certified public accountant, dated no more than thirty (30) days prior to the application date, indicating a net worth of $500,000 or more in assets located in the state; **or**

(c) An irrevocable letter of credit to the department in the amount of $500,000.[~~; or~~

~~(d) Provide other proof of financial responsibility in the amount of $500,000, with accuracy attested to on a form provided by the Department of Agriculture, as provided in Section 5 of this administrative regulation.~~] [~~(b) The itinerary shall be delivered to the department at least fourteen (14) days prior to the first scheduled setup and shall be updated in writing, within five (5) days, if cancellations or additional locations occur.~~

~~(3) Except as provided in subsection (4) of this section, the applicant shall provide proof of liability insurance in the amount of $500,000 per occurrence of bodily injury or death, for each amusement ride or amusement attraction.~~

~~(a) The proof of insurance shall include a statement that the insurer shall not cancel the policy without thirty (30) days written notice to the commissioner.~~

~~(b) Proof of insurance shall be either the policy or a certified statement issued by the insurer and shall include:~~

~~1. A listing of all amusement rides and amusement attractions insured, or~~

~~2. A statement that all amusement rides and amusement attractions operated under the supervision of the insured are covered.~~

~~(4) If the applicant's amusement rides or amusement attractions are permanently located or erected, he may, in lieu of providing proof of liability insurance, provide proof of financial responsibility in the sum of $500,000 on or before the date of the initial inspection of the calendar year. Proof of financial responsibility shall be shown by one of the following methods:~~

~~(a) Provide proof of liability insurance of $500,000 per occurrence of bodily injury or death,~~

~~(b) Submit a financial statement, certified by a licensed certified public accountant, dated no more than thirty (30) days prior to receipt of the application, indicating a net worth of $500,000 or more in assets located in the state;~~

~~(c) Tender an irrevocable letter of credit to the department in the sum of $500,000, or~~

~~(d) Provide other proof of financial responsibility in the amount of $500,000, with accuracy attested to on forms incorporated by reference in Section 5 of this administrative regulation.~~]

Section 4. Upon receipt of a complete[~~proper~~] application, applicable fees, proof of liability insurance or financial responsibility, and a complete[~~the required~~] itinerary, shall a business identification number[~~an operating permit shall~~] be issued in the name of the applicant. If all items required are not physically available **to the inspector when the initial safety inspection takes place** [~~at the time of the initial safety inspection to the inspector~~], the inspector

shall not perform the initial safety inspection and a business identification number shall not be issued. The business identification number certificate[operating permit] shall be available for inspection at all times. If the business identification number[permit] holder is operating in multiple locations, a clear and legible[photostatic] copy of the business identification number shall be displayed[operating permit shall be accepted].

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Business Identification Number Application for Rides and Attractions", 08/08,

(b)["Permit Application for Mobile Rides and Attractions", 03/03;

(b) "Permit Application for Permanent Fixed Locations", 03/03;

(c)] "Itinerary of Mobile Operators", 03/03, and

(c)[(d)] "Itinerary of Permanent Fixed Locations", 03/03[; and

(e) "Certification of Proof of Financial Responsibility", 03/03].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Agriculture, Division of Regulation and Inspection, 111[107] Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: February 9, 2009

FILED WITH LRC: February 10, 2009 at 4 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, April 14, 2009)

302 KAR 16:020. Inspection and operation of amusement rides or amusement attractions.

RELATES TO: KRS 247.232, 247.234(3), 247.236(3)[, 247.990]

STATUTORY AUTHORITY: KRS 247.234, 247.236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234(3)[(2)](b) and (d) require the department to promulgate administrative regulations establishing initial safety inspection fees and safety requirements for amusement rides or attractions. KRS 247.236(3) requires the department to promulgate an administrative regulation establishing the requirements for the construction of safety barriers around an amusement ride or attraction. This administrative regulation establishes safety guidelines for the operation and inspection of amusement rides or attractions and establishes the initial safety inspection fees.

Section 1. Definitions. (1) "Air inflatable device" means an object[amusement ride or amusement attraction] that is filled with air by an electric motor-driven blower.

(2) "Chair lift or aerial tramway" means an amusement ride or amusement attraction that is operated by a series of cables and pulleys.

(3) ["Climbing wall" means a self-belayed climbing attraction.

(4)] "Dark ride" means an amusement ride or amusement attraction which is enclosed and has the lights turned off during the duration of the ride, and is a nonmechanized self-propelled amusement.

(4)[(5)] "Go-cart facility" means an amusement ride or amusement attraction that carries a rider on a fixed path and includes the vehicle which travels the fixed path.

(5)[(6)] "Inspection fee" means a fee required to be paid to operate any amusement ride or amusement attraction in Kentucky[, and established in this administrative regulation].

(6)[(7)] "Kiddie ride" means an amusement ride or amusement attraction that has a height requirement of forty-two (42) inches or less to ride.

(7)[(8)] "Major ride" means any ride that:

(a) Has height requirement of forty-three (43) inches or greater to ride; and

(b) Does not have a specific fee established for it in Section 2 of this administrative regulation.

(8)[(9) "Operating permit" means a business identification number identifying the owners of an amusement ride or amusement attraction.

(10)] "Play port" means an object[amusement ride or amusement attraction] designed for use by children on which a child can swing, walk, climb, or slide, and which follows a fixed path.

(9)[(11) "Pony ride" means an amusement ride attached to a nonmotor-powered mechanical wheel and powered by an animal of the equine species.

(12)] "Steel roller coaster" means roller coaster of which the track portion is constructed of steel or other metal material[substance].

(10)[(13)] "Walk through" means a fun house, glass house, or laser tag that is nonmechanized and self-propelled.

(11)[(14)] "Water ride" means an amusement ride or amusement attraction which uses water as a means of propulsion and includes bumper boats and water park slides which are in excess of fifteen (15) feet[ninety-six (96) inches] at the highest point of the slide.

(12)[(15)] "Wooden roller coaster" means a roller coaster of which the track portion is constructed of wood material.

Section 2. (1) All amusement ride and amusement attractions operating in Kentucky shall bear an initial safety inspection seal. Following an initial safety inspection, an initial safety inspection seal shall be affixed to a permanent and accessible section of the amusement ride or amusement attraction.

(2) If the required initial safety inspection seal does not appear on the amusement ride or amusement attraction, operation of the amusement ride or amusement attraction shall be stopped until proof of a initial inspection is provided.[The operating permit shall not be valid for an amusement ride or amusement attraction which has not passed an initial safety inspection and had the inspection fees paid as set out in Section 2 of this administrative regulation.

(2) All amusement rides and amusement attractions operating in Kentucky shall bear an inspection seal. Following a safety inspection, an inspection seal shall be affixed to a permanent and accessible section of the amusement ride or amusement attraction.

(3) If the required inspection seal does not appear on the amusement ride or amusement attraction, operation of the amusement ride or amusement attraction shall be stopped until proof of a valid inspection is provided. Amusement attraction shall not include hay rides, all haunted houses, mazes, manual belayed climbing walls, and mechanical bulls.]

Section 3. Initial safety inspection fees shall be levied for each amusement ride and amusement attraction. The initial safety inspection fees shall be assessed as follows[for]:

(1) Air inflatable devices[inflatables] shall be fifty (50) dollars;

(2) [Pony rides shall be fifty (50) dollars;

(3)] Euro or turbo bungee shall be seventy-five (75) dollars;

(3)[(4)] Kiddie rides shall be seventy-five (75) dollars;

(4)[(5)] Play port shall be seventy-five (75) dollars;

(5)[(6)] Climbing walls shall be seventy-five (75) dollars;

(6)[(7)] Water rides shall be seventy-five (75) dollars;

(7)[(8)] Dark rides shall be seventy-five (75) dollars;

(8)[(9)] Walk throughs and glass houses shall be seventy-five (75) dollars;

(9)[(10)] Tracked or trackless trains shall be $100;[-]

(10)[(11)] Go cart facility shall be $125;

(11)[(12)] Major rides shall be $150;

(12)[(13) Chair lifts or aerial tramway shall be $200;

(14)] Steel roller coaster shall be $200;

(13)[(15)] Bungee or ejector seat shall be $200;

(14)[(16)] Wooden roller coaster shall be $300; and

(15)[(17)] Any amusement ride or amusement attraction not listed in this section shall be $150.

Section 4. All new permanent amusement rides and amuse-

ment attractions shall have all required state and local permits before the initial safety inspection [can be completed].

Section 5. All amusement rides and amusement attractions shall be [maintained in good electrical and mechanical condition and shall be] under the supervision of an operator at all times during the operation of the amusement ride or amusement attraction.

Section 6 (1) All amusement rides and amusement attractions which are potentially hazardous to spectators shall be fenced to provide protection to bystanders and riders **in accordance with KRS 247.236(3)**.

(2) A barrier providing a safe distance from the outermost arc shall be present for aerial amusement rides or swings

Section 7. Properly charged fire extinguishers shall be present at all amusement rides and amusement attractions not more than seventy-five (75) feet from any point of a ride. A first aid kit shall be available at the park, fair, event, or ride location

Section 8 The operator of an amusement ride or amusement attraction shall deny admittance to an amusement ride or amusement attraction to persons who appear to be under the influence of alcohol or drugs, persons who are wearing footwear or clothing that may cause a safety concern, or persons who have in their possession any object that can be dropped from the amusement ride or amusement attraction.

Section 9. (1) All power units shall be shielded to provide for public safety.

(2) An amusement ride or amusement attraction, or its power unit, shall not be located where it may present a fire hazard to adjacent buildings, exhibits, or other structures

(3) Use of gasoline engines and storage of gasoline in or adjacent to a riding device shall be in an approved safety container and at a safe distance from the amusement ride or amusement attraction

(4) All electrical wires leading to and from the amusement ride or amusement attraction shall be protected and insulated to prevent shock hazard and shall be properly grounded. All electrical junction boxes shall be locked or sealed.

Section 10. Pre-operation Inspection (1) The owner or operator shall provide to the department's safety inspectors the manufacturer pre-operational inspection checklist specific to each ride or attraction

(2) The owner of the ride or attraction shall develop a daily pre-opening checklist which shall contain, at a minimum, all requirements listed in the operator manual, the date and time of the pre-operation inspection, printed name of the person completing the pre-operation inspection, and signature of the person completing the pre-operation inspection

(3) The owner or operator of an amusement ride or attraction shall perform a pre-opening daily pre-operation inspection **prior to public use of the ride or attraction, using the checklist provided by the owner, in accordance with subsection (2) of this section. This pre-opening inspection shall include rides or attractions that do not require an operator**[using the form required in subsection (2) of this section prior to public use of the ride or attraction].

(4) Upon request, the owner or operator shall immediately provide to the safety inspector a logbook containing all pre-operation daily inspections for the previous twelve (12) months. This logbook shall be kept in close proximity to the ride or attraction. [(5) All rides and attractions shall complete and document a daily pre-opening inspection, including rides or attractions that do not require an operator.]

Section 11. Amusement rides and attractions shall be operated according to manufacturer's guidelines.

Section 12 To assure continued safety of amusement rides and amusement attractions, routine inspections may be conducted at undetermined times throughout the year. [(1) All power units shall be shielded to provide for public safety.

(2) An amusement ride or amusement attraction, or its power unit, shall not be located where it may present a fire hazard to adjacent buildings, exhibits, or other structures.

(3) Use of gasoline engines and storage of gasoline in or adjacent to a riding device shall be in an approved safety container and at a safe distance from the amusement ride or amusement attraction.

(4) All electrical wires leading to and from the amusement ride or amusement attraction shall be protected and insulated to prevent shock hazard and shall be properly grounded. All electrical junction boxes shall be locked or sealed.

Section 8. Properly charged fire extinguishers shall be present at all amusement rides and amusement attractions.

Section 9. The operator of an amusement ride or amusement attraction shall deny admittance to an amusement ride or amusement attraction to persons who appear to be under the influence of alcohol or drugs, who are not wearing foot protection, such as shoes or secured sandals, or who have in their possession any object that can be dropped from the amusement ride or amusement attraction.

Section 10. To assure continued safety of amusement rides and amusement attractions, periodic safety inspections may be conducted at various times throughout the term of the permit.]

RICHIE FARMER, Commissioner

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GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, April 14, 2009)

302 KAR 16:030. Determination of administrative or safety violations which cannot be corrected immediately; section stop order.

RELATES TO: KRS 247.232, 247.234, 247.236[, 247.990]

STATUTORY AUTHORITY: KRS 247.234, 247 236

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.234 authorizes the Commissioner of the Department of Agriculture to provide for [safety] inspections for amusement rides or attractions. This administrative regulation establishes procedures to determine [safety] violations which cannot be immediately corrected [immediately].

Section 1. Definition. "Immediately correctable violation" means a violation which can be corrected **on the day** [at the time] of the initial inspection.

Section 2. The department's[department safety] inspector shall determine the nature and severity of [safety] violations and shall determine **if**[when] the violations are not immediately correctable based on the manufacturer's standards, KRS 247.232 through 247 236, and 302 KAR 16.010 through 302 KAR 16:140[16 070].

Section 3. A violation issued for operation of an amusement ride or amusement attraction without a valid business identification number[permit] shall be considered a violation which is not immediately correctable.

Section 4. A safety inspector may order closed a unit or portion of a ride which fails to comply with safety or operational guidelines. **If closure of the ride** [where closure of such] does not affect the remaining portion of the ride, by placing upon that unit or portion of the ride a section stop order The owner shall notify the department

when the unit or portion of the ride has been repaired to obtain information for section stop order removal.

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GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, April 14, 2009)

302 KAR 16:040. Correction of safety violations and right to reinspection.

RELATES TO: KRS 247.232, 247.234, 247.236[~~, 247.990~~]
STATUTORY AUTHORITY: KRS 247.234, 247.236
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247 234 authorizes the Commissioner of the Department of Agriculture to **promulgate administrative regulations** [~~provide~~] for safety inspections for amusement rides or attractions. This administrative regulation establishes procedures for the correction of safety violations by amusement rides or attractions

Section 1. If a department safety inspector finds an amusement ride or [~~amusement~~] attraction does not comply with KRS 247.232 to 247.236, 302 KAR 16:010 through 302 KAR 16:140[~~070~~], or manufacturer standard[~~manufacturer's standards~~], **the inspector** [~~he~~] shall issue a stop operation order prohibiting the operation of the amusement ride or [~~amusement~~] attraction, or any part thereof, found to be in violation. The stop operation order shall be removed from the amusement ride, amusement attraction, or structure only when the violation has been corrected and then only by a department safety inspector. A stop operation order shall not be issued for any violation found to be correctable as defined in 302 KAR 16:030.

Section 2. If, upon [~~an initial~~] reinspection of an amusement ride or [~~amusement~~] attraction under a stop operation order, **it is found that** the safety violation has been corrected within twenty-four (24) hours, the owner **shall**[~~may~~] not be charged a reinspection fee as authorized by KRS 247.234.

Section 3. If a safety inspector determines[~~in the opinion of the department's inspector,~~] an amusement ride or [~~amusement~~] attraction present an imminent danger, **the inspector** [~~he~~] shall issue and attach a stop operation order against the use of the amusement ride or attraction[~~device or structure~~]. The order shall not be removed until the device is made safe, and then only by a safety inspector[~~the department or its designee; and in the meantime the device shall not be used~~].

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GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, April 14, 2009)

302 KAR 16:070. Reports of injuries involving amusement rides and amusement attractions.

RELATES TO. KRS 247.233[~~247.232, 247.234, 247.236, 247.990~~]
STATUTORY AUTHORITY: KRS 247.233[~~247.234~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.233 requires amusement ride and attraction owners to submit a written report following an accident or specified incident and requires the department to conduct mandatory investigations of amusement ride and attraction accidents and incidents. This administrative regulation establishes **requirements for submission of the report** [~~the content of and when and where the reports are to be submitted~~] and when the mandatory incident investigation **shall**[~~will~~] occur. [~~247.234 requires the department to conduct mandatory initial safety inspections of amusement rides and amusement attractions and to conduct subsequent inspections at any time to determine if a particular amusement ride or amusement attraction complies with accepted standards of safety. It is necessary for the department to receive reports of amusement ride or amusement attraction accidents causing death or injury in a timely manner to insure that a particular amusement ride or attraction complies with accepted standards of safety and to adequately inform the public of the presence of a safety violation.~~]

Section 1. Amusement ride or attraction owners who are required to file a written incident report shall immediately call the department to report relevant information. The required notice to the department shall be furnished through the written accident report within twelve (12) hours of notice of the incident.

Section 2. Incident Reports A written report shall be filed by the owner of an amusement ride or amusement attraction if any of the following occurs as a result of an accident or incident involving an amusement ride or amusement attraction or equipment:
(1) The **events listed in KRS 247.233(2)**; [~~death of a person;~~
~~(2) An injury requiring medical treatment other than first aid;~~
~~(3) Damage to amusement ride or attraction that affects the future safe operation of the ride or attraction;~~]
(2)[~~(4)~~] Any sudden, unplanned, nonaccidental stoppage of the ride; or
(3)[~~(5)~~] Structural or major mechanical failure of an amusement ride or amusement attraction.

Section 3. Where to Report. (1) If any event specified in Section 2 of this administrative regulation occurs, the owner **shall**[~~must~~] immediately report the event by telephoning the Department of Agriculture, Division of Regulation and Inspection at (502) 573-0282
(2) If[~~When~~] a written report is required, the report shall be submitted[~~,~~] within twelve (12) hours[~~,~~] to the Department of Agriculture, Division of Regulation and Inspection, 111 Corporate Drive, Frankfort, Kentucky 40601. **The report may also be submitted via the department's Web site, http://www.kyagr.com/consumer/ri/rides/AmusementRidesand Attractions.htm** [or may be submitted via the department's Web site]. The written report shall contain the following information:
(a) The date and time of the incident or accident,
(b) The date and time the report was completed;
(c) The location of the incident or accident;
(d) A description of the incident or accident;
(e) The name, address, phone number, and business identification number of the owner or company for the amusement ride or amusement attraction;
(f) The name and address of **each operator** [~~the operator(s)~~] of the amusement ride or amusement attraction,
(g) The name, serial number, and manufacturer of the amusement ride or amusement attraction, if known;
(h) The name, address, phone number, gender, and age of the injured person, if any;
(i) The nature and extent of the injury;
(j) The name and location of the treating facility or person; and
(k) The address, telephone number, and printed and signed name of the person completing the report.

Section 4. Incident Investigation (1) The department shall initiate an incident investigation within twelve (12) hours of the initial notification of an event requiring an incident report.

(2) Pending the completion of an incident investigation, the amusement ride or amusement attraction shall not be operated, moved, cleaned, or repaired without written approval of the department other than as necessary for life or safety.[~~"Serious injury" means an injury which requires treatment by a licensed physician.~~

~~Section 2. Accident Reports. A written report shall be filed by the owner of an amusement ride or amusement attraction if one (1) of the following occurs as a result of an accident or incident involving an amusement ride or amusement attraction, equipment, or operating site.~~

~~(1) The death of a person;~~

~~(2) An injury requiring medical treatment;~~

~~(3) An injury to a person not receiving medical treatment;~~

~~(4) The involvement of a person requiring the intervention of emergency response or rescue personnel;~~

~~(5) Damage to property; or~~

~~(6) Structural or major mechanical failure of an amusement ride or amusement attraction.~~

~~Section 3. Reports of a Death or Serious Injury. (1) If a death or serious injury results from the operation of an amusement ride or amusement attraction, the owner of the amusement ride or amusement attraction shall, upon being notified, immediately report the death or serious injury by telephoning the Department of Agriculture, Division of Regulation and Inspection at (502) 573-0282.~~

~~(2) If a death or serious injury results from an amusement ride or amusement attraction accident, a written report shall be submitted, within twenty-four (24) hours, to the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601. The written report shall contain the following information:~~

~~(a) The name and address of the owner of the amusement ride or amusement attraction,~~

~~(b) The name and address of the operator of the amusement ride or amusement attraction,~~

~~(c) The operation permit number for the amusement ride or amusement attraction;~~

~~(d) The location of the accident;~~

~~(e) The date and time of the accident,~~

~~(f) The name, serial number, and manufacturer of the amusement ride or amusement attraction;~~

~~(g) If the accident was reported by telephone, the time reported and name of the person informed of the accident,~~

~~(h) The names and addresses of all persons killed or injured,~~

~~(i) The nature and extent of the injuries;~~

~~(j) A description of the accident;~~

~~(k) The identity of persons or agencies providing medical or emergency treatment, and~~

~~(l) A duplicative copy of the accident or incident report submitted to the liability insurance carrier or investigative authority.~~

~~(3) For any other reportable accident or incident involving the operation of an amusement ride or amusement attraction, a written report shall be submitted, within five (5) days, to the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601.~~

~~Section 4. Safety Inspection. (1) The department shall initiate an investigation and safety inspection within twenty-four (24) hours of the initial notification of a death or serious injury resulting from the operation of an amusement ride or amusement attraction.~~

~~(2) Pending the completion of a safety inspection, the amusement ride or amusement attraction shall not be operated, moved, or repaired without written approval of the department.~~]

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GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, April 14, 2009)

302 KAR 16:080. Qualifications and inspection criteria for bungee [(~~bungy~~)] jumping or similar apparatus permit.

RELATES TO: KRS 247.232, 247.234

STATUTORY AUTHORITY: KRS [~~246.040,~~] 247.232, 247.234, 247.236[~~, 247.990~~]

NECESSITY, FUNCTION, AND CONFORMITY. **KRS 247.234 requires the Department of Agriculture** to establish the criteria for obtaining a permit to operate an amusement ride or attraction in the Commonwealth of Kentucky. **This administrative regulation establishes requirements for**[-] designated bungee **jumping** [(~~"bungy"~~)] or similar apparatus.

Section 1. Definitions. [~~The following definitions shall apply to this administrative regulation:~~] (1) "Air bag" means a device which cradles the body and which uses an air release breather system to dissipate the energy due to a fall, thereby allowing the person to land without an abrupt stop.

(2) "Bungee[~~Bungy~~] cord" means the elastic rope to which the jumper is attached.

(3) "Bungee[~~Bungy~~] jumping" means a person falling from a height, including either a permanent or mobile jumping facility, where the descent is limited by attachment to the bungee[~~bungy~~] cord.

(4) "Bungee[~~Bungy~~] jump site" means the area designated for the bungee[~~bungy~~] jump operation by the owner or operator and approved by the Kentucky Department of Agriculture.

(5) "Carabineer" means a shaped metal device with a gate used to connect sections of the bungee [~~bungy~~] cord, jump rigging, equipment or safety gear. [~~Carabineers used for life supporting activities must be of the locking design.~~]

(6) "Catapulting, launching, negative or reverse jumping" means the practice of stretching the bungee [~~bungy~~] cord while attached to the jumper who is held on the ground then released and propelled into the air.

(7) "Dynamic loading" means the load placed on the bungee [~~bungy~~] cord, rigging, harness, etc. by the weight of the jumper plush and the G forces involved

(8) "G force" means the unit of force equal to the gravity exerted on a body at rest.

(9) "Harness" means an assembly to be worn by a jumper and to be attached to a bungee [~~bungy~~] cord designed to prevent the wearer from becoming detached from the bungee [~~bungy~~] system

(10) "Lift" means a device or similar equipment utilized to transport customers, **the** general public**, or employees** [~~or employee~~] to work area or jump launch area.

(11) "Military specification (Mil-Spec) cord" means:

(a) Preloaded or prestretched rubber cords **that are:**

1. Originally developed for military use;

2.[~~. These cords are~~] Made in conformance with military specifications and are often referred to as "Mil-Spec"**; and**

3. [~~. These cords are~~] Usually cotton or nylon sheathed**; or**

(b)[~~. There are some~~] Nonmilitary sheathed cords [~~in use that may meet the specifications. This type of cord is~~] usually made of three (3) to five (5) sheathed cords contained in one (1) outer sheathing.

(12) "New Zealand cord" means all rubber cords **that:**

(a) Are made of synthetic or natural rubber using continuous loops or strands;

(b)[~~. These types~~] Were developed in New Zealand;

(c)[~~. These type cords~~] Do not usually utilize any sheathing;[~~,~~] and

(d) Are configured as one (1) large cord made of several hundred small rubber strands

(13) "Platform" means the launch area where jumpers will be assembled and depart from.

(14) "Safe working load (SWL)" means the maximum rated load which can be safely handled by equipment or a component of the rigging under specified conditions, expressed in pounds.

(15) "Safety factor" means the ratio obtained by dividing the breaking load of any piece of equipment by its working load.

(16) "Safety harness (safety belt)" means an assembly worn by a jump master, etc. designed to be attached to a safety line to stop the wearer from falling

(17) "Safety line" means a line used to connect the safety harness or belt to an anchorage point or rail in situations where there is a risk of a fall.

(18) "Sandbagging" means the practice of a jumper holding onto any object (including another person) while jumping, for the purpose of exerting more force on the bungee [~~bungy~~] cord in order to stretch it further, and then releasing the object at the bottom of the jump causing the jumper to rebound with more force than could be created by the jumper's weight alone.

(19) "Stunt jumping" means the combining of any other activity with bungee [~~bungy~~] jumping with disregard for safety clearances as outlined in this criteria.

(20) "Tandem, multiple, or double jumping" means the practice of two (2) or more harnessed together while jumping simultaneously from the same platform.

(21) "Ultimate tensile strength" means the point at which [~~when~~] the applied load reaches a maximum prior to failure, expressed in pounds.

Section 2. Applicability and Inspection Criteria. (1) Applicability

(a) This administrative regulation shall apply to bungee[~~bungy~~] jumping sites and operations open to the general public.

(b) This administrative regulation shall not apply to bungee[~~bungy~~] jumping sites and operations the department determines are for demonstration or exhibition purposes only and which are not open to the general public.

(2) Inspection criteria This administrative regulation provides inspection criteria for:

(a) Site and site approval;

(b) Design;

(c) Equipment testing;

(d) Management operation;

(e) Operation procedures;

(f) Emergency provisions; and

(g) Emergency procedures.

Section 3. Operating Approval. (1) The owner or operator of a bungee[~~bungy~~] jumping site or facility shall be issued a permit from the Kentucky Department of Agriculture pursuant to KRS 247.234 and **this administrative regulation** [~~302 KAR 16 080~~] prior to operation in the state of Kentucky

(2) The owner or operator of a bungee[~~bungy~~] jumping site or facility shall comply with **247.232 to 247.236 and 302 KAR Chapter 16** all relevant statutes and administrative regulations throughout the permit period

(3) The following business identification number[~~permit~~] periods and inspection fee shall apply to all bungee[~~bungy~~] jumping sites or facilities operating in the Commonwealth of Kentucky.

(a) For permanent and mobile installations the business identification number[~~permit of operation~~] shall be renewed annually

(b) For mobile operations an inspection fee will be charged at each "set-up".

(4) Site plan and equipment design and construction.

(a) A report shall be submitted to the construction or "set-up" which shall contain site plans, safety zones, drawings, specifications and certification of equipment and structures, and operating manuals.

(b) The department may require a registered engineer's report that the design and construction of the structures, equipment, access ways, operating areas, and intended method of operations meet applicable engineering standards and local codes.

(c) The owner or operator of a bungee[~~bungy~~] jumping site or facility shall provide a certificate of insurance to the department that an insurance policy exists covering any spectator or patron in the amount required by law.

Section 4. Permanent Platform. All bungee[~~bungy~~] jumping sites or facilities shall be equipped with a platform which meets the following criteria:

(1) The safety working load (SWL) shall be determined by the maximum weight on the platform at any one (1) time, with a safety factor of not less than five (5), to include any dynamic loads from the jumping operation.

(2) **If**[~~Where~~] the platform is not an integral part of the structure to which **the platform is attached, the SWL** [~~they are attached,~~] shall have a safety factor of at least five (5) over the total design load, to include any dynamic loads from the jumping operation.

(3) **If**[~~Where~~] the platform is not an integral part of the structure, **the platform shall** [~~these platforms will~~] have a back-up safety at all times with a safety factor of at least five (5).

(4) On either type of platform, a balance load **shall**[~~must~~] be maintained during all operations.

(5) The platform shall have a slip-resistant floor surface. The platform shall be constructed of an open mesh type steel to insure jump master has visual site of jumper at all times during the jump operation from jump until recovery.

(6) The platform shall have anchor points for safety harness belt lanyards, designed and placed to best suit the operator's need.

(7) The platform shall be constructed to have sufficient working space, for the intended number of persons, as specified in the site manual.

(8) There shall be a self-closing gate with an automatic positive lock system across the jump point when a jumper is not present at the jump point.

(9) Access and platform walkways, stairways, ladders, handrails, etc. shall meet minimum OSHA standards**, 29 U.S.C. 651 and 29 C.F.R. 1900 to 2000,** and Kentucky Building Code**, KRS Chapter 198B, if** [~~when and where~~] applicable.

(10) All shackles shall be safety-wired

(11) The system for recovering the jumper shall be operated by either the jump operator or jump master.

(12) There shall be an alternative method of jumper recovery should the main recovery system fail to recover the jumper.

(13) In a human powered retrieval system or in a friction lowering system, an eleven (11) mm or larger rock climbing rope shall be used.

(14) **If,** in a human powered retrieval system,[~~where~~] a jumper is pulled back up to the jump platform, a locking mechanism (for example, and ascender or jumper) shall be used to stop and hold the jumper in one (1) place once the applied force on the retrieval rope is removed

(15) In a friction lowering system there shall be a "dead man switch" or locking mechanism that will stop the lowering action of the system should a situation arise **in which**[~~where~~] the person in charge of lowering the jumper becomes unconscious or unable to perform the lowering duties safely.

(16) All bungee[~~bungy~~] cords shall be attached to the anchor point at all times the cord is in the connection area.

Section 5. Bungee [~~Bungy~~] Cord(s). All bungee[~~bungy~~] cords used at bungee[~~bungy~~] jumping sites or facilities shall meet the following criteria:

(1) The minimum factor of safety (FS) for any configuration bungee[~~bungy~~] cord shall be not less than five (5). The maximum dynamic load possible for a jumper to exert on a bungee[~~bungy~~] cord shall be no greater than one-fifth (1/5) or twenty (20) percent of that cord's minimum breaking strength. Minimum breaking strength shall be no less than that recommended by the manufacturer.

(2) The maximum G force allowable to a jumper using waist and chest harness is four and five-tenths (4.5) Gs. The maximum G force allowable to a jumper using an ankle harness is three and five-tenths (3.5) Gs.

(3) In a multiple cord design (Mil-Spec) the cords shall be entirely enclosed in a protective sheath.

(4) In a single cord system the binding shall hold the cord threads in the designed positions. The binding shall have the same characteristics as the cords itself.

(5) Bungee[~~Bungy~~] cord design, manufacturing, and testing shall meet the following specifications:

(a) All bungee[~~bungy~~] cord manufacturers shall perform conclusive ultimate tensile strength testing on a representative amount of all manufactured bungee[~~bungy~~] cords with stress to failure of

the bungee[~~bungy~~] samples. The bungee[~~bungy~~] cord sample **shall**[~~must~~] have been constructed using the manufacturer's standard methods which shall include bungee[~~bungy~~] cord end connections. All tests shall be performed or supervised by an independent testing laboratory or a certified engineer. Test results shall be readily available, upon request. The ultimate tensile strength is reached when the applied load reaches a maximum before failure.

(b) A load verses elongation curve, resulting from the aforementioned test shall be used to calculate the maximum G force exerted by the cord on a jumper within the proper weight range. Documentation of these calculations shall be readily available upon request

(c) All bungee[~~bungy~~] cord manufacturers shall provide specifications on maximum allowable usage of bungee[~~bungy~~] cords expressed in number of jumps.

(d) All bungee[~~bungy~~] cord manufacturers shall provide specifications on maximum deterioration or damage to cords allowed. This may include but is not limited to hours of ultraviolet light exposure, percentage of broken threads, evidence of thread wear, etc.

(6) Bungee[~~Bungy~~] cords shall be removed from use and destroyed **If**[~~when~~]:

(a) They exhibit deterioration or damage,

(b) They do not react according to specifications;

(c) They have reached the maximum usage expressed in number of jumps as specified by the manufacturer;

(d) They exhibit any abnormalities as specified by the manufacturer.

(7) Bungee[~~Bungy~~] cords shall be considered destroyed **If**[~~when~~] they are cut into lengths not greater than five (5) feet.

(8) All operators shall have an audible system for recording the number of jumps on each individual cord in use. This data shall be readily available to the manufacturer, any jumper, and any regulating authority. This recording system shall be documented in the site manual.

(a) Cord manufacturer;

(b) Cord lot;

(c) Cord serial number;

(d) Total allowable jump per manufacturer specifications;

(e) Record name of jumper to include address and phone number;

(f) Jump date and time.

(9) Any material such as "webbing" used in either of the two (2) end attachment points of a bungee[~~bungy~~] cord regardless of whether it is designed as a single or multiple cord system shall have a strength of at least three (3) times the ultimate tensile of the cord.

(10) All end attachment points subject to wear are to be retired and destroyed when that cord is retired and destroyed.

(11) The unloaded length of the bungee[~~bungy~~] cord plus the rigging system shall be less than one-half (1/2) the designed extended length.

Section 6. Jumper Harness and Hardware. All bungee[~~bungy~~] jumping harnesses and hardware shall meet the following criteria:

(1) All harness, webbing, bindings, ropes, and hardware shall meet or exceed the standards as set by the National Fire Prevention Association (NFPA) 1983 Standard on Fire Service Life Safety Rope, Harness, and Hardware (1990 Edition).

(2) A jumper harness shall be either a full body harness, a sit harness with shoulder straps, or an ankle harness. Harnesses shall be specifically designed and manufactured for mountaineering or bungee [~~bungy~~] jumping.

(3) Harnesses shall be available to fit the range of patron sizes accepted for jumping

(4) There shall be a redundant connection (back-up) between the harnesses and the cord(s).

(5) All load supporting slings or webbing shall be flat tubular mountaineering webbing or its equivalent. Minimum breaking strength shall be 6,000 pounds. Slings or webbing shall be formed by sewing, or properly tied with a "water knot" with taped ends.

(6) Carabineers shall be the steel crew gate type with a minimum breaking strength of 6,000 pounds. All carabineers shall be designed and constructed using the standards for mountaineering gear. **Carabiners used for life-supporting activities shall be of the locking design.**

(7) All ropes, pulleys, and shackles used to raise, lower, or hold the jumper shall have a minimum breaking strength of 6,000 pounds. All pulleys shall be compatible with the rope.

(8) All anchors shall meet or exceed the following:

(a) **If**[~~Where~~] a single anchor is used to attach the bungee[~~bungy~~] cord to the platform, it shall have a factor of safety of twenty (20).

(b) **If**[~~Where~~] two (2) anchors are used to attach the bungee[~~bungy~~] cord to the platform, each shall have a safety factor of five (5).

(c) **If**[~~Where~~] the anchor(s) is made of wire rope, it shall have swagged ends with the thimble eyes.

(d) **If the anchor**[~~Where the anchor(s)~~] is made of "webbing", it shall be manufactured by a company that normally supplies these anchors to crane and rigging companies.

(9) Test of all jumper harnesses and hardware **shall**[~~have to~~] be available to the inspector

(10) All items **shall**[~~to~~] be serial numbered.

Section 7. Equipment Inspection and Testing. All bungee[~~bungy~~] jumping sites or facilities shall comply with the following equipment inspection and testing criteria:

(1) All bungee[~~bungy~~] cords shall be inspected by the jump master. Frequency of inspection shall be stated in the operations manual. **At a minimum, the cords**[~~As a minimum the cord(s)~~] shall be inspected prior to opening the site each day, and any other inspections [~~as~~] specified by the bungee[~~bungy~~] cord manufacturer **shall be conducted**.

(2) All jump rigging lowering system, platform, anchors, and safety gear shall be regularly inspected for damage or wear, by the jump master. Frequency of inspection shall be stated in the operations manual. **At**[~~As~~] a minimum, the equipment shall be inspected prior to opening the site each day, and any other inspections [~~as~~] specified by the equipment manufacturers **shall be conducted**.

(3) All harnesses and harness rigging shall be inspected for damage or wear before use by each jumper

(4) Hardware subject to abnormal loadings, being impacted against hard surfaces, or having surface damage, shall be replaced.

(5) Ropes, webbing, and slings subject to abnormal shock load shall be replaced.

(6) Any items of equipment, rigging, or safety gear that are found to be substandard shall be replaced immediately. If a replacement is not available, jumping shall cease immediately, until a proper replacement is available.

(7) Each item shall have its own permanent individual identification.

(a) The application of this identification shall not harm the material of the item.

(b) The identification shall be clearly visible to the operators during daily operations

(c) The identification shall be recorded on the equipment log sheet.

(d) Recovery time between reusage on each bungee[~~bungy~~] cord after each use will be marked on cord and/or entered in log book by serial number.

Section 8. Jump Area or Jump Space The following criteria regarding the jump space or jump area shall apply to all bungee[~~bungy~~] jumping sites or facilities:

(1) Jump area.

(a) The jump space **shall be**[~~is~~] defined using dimensions in the lateral (perpendicular), and longitudinal (parallel) directions with respect to the jumper's direction of launch. The following criteria shall be used to design this space:

1. Maximum system length - the maximum stretched length of a bungee[~~bungy~~] cord system including static line length.

2. Average cord length - the average of the unstretched (static) bungee[~~bungy~~] cord system length and the maximum system length.

(b) The jump space **shall be**[~~is~~] defined in two (2) parts: top jump space and bottom jump space. The top jump **space shall be**[~~is~~] directly above the bottom jump space. The jump space **shall**

be[is] longitudinally and laterally centered under the jump point.

(c) The bottom jump space shall be[is] a box-shaped volume extending from ground level upward to an altitude lying below the jump point by a distance equivalent to fifty (50) percent of the maximum system length. The longitudinal dimension of this volume (length) shall be[is] equivalent to 200 percent of the unstretched, static length of the bungee[bungy] cord system.

(d) The top jump space shall be[is] a pyramid-shaped volume The four (4) base points of this pyramid shape shall be[are] coincident with the topmost four (4) points of the bottom jump space The top point of this pyramid shape shall be[is] coincident with the jump point. (See Annex 1)

(e) The jump space shall be free of obstructions with the exceptions of the water or air bag.

(2) Over land.

(a) The jump area shall be fenced or other barriers provided. The fence or barriers shall be designed to prevent people and animals from entering the jump area.

(b) The jump area shall be free of spectators at all times.

(c) The jump area shall be free of any equipment or staff If[when] a jumper is being prepared on the jump platform and until the jumper is stable after the jump.

(d) If the jumper is lowered for recover, a clean, smooth, nonabrasive surface shall be provided for the jumper and cord(s). This recovery area shall be at least ten (10) feet by ten (10) feet.

(e) A place for the jumper to sit and recover shall be provided close to, but outside the landing area.

(f) An air bag certified for a fall from the platform height shall be in place centered under the jumper.

(g) There shall be adequate clearance between the jumper at full extension and the surface of the air bag

(h) Adequate storage shall be provided on site to protect equipment from damage. The storage shall be secured against unauthorized entry.

(3) Over water.

(a) The jump space/landing area shall be free of other vessels, floating and submerged objects and the public, and If[when] in open water, shall be defined by the deployment of buoys. A sign of appropriate size which reads "BUNGEE [BUNGY] JUMPING KEEP CLEAR" shall be fixed to the four (4) sides of the buoy line.

(b) Minimum water depth shall be nine (9) feet.

(c) The recovery vessel shall

1. Be properly registered and/or certified by appropriate authorities.

2. Be positioned accurately and remain in a constant position for the recovery.

3. Have a landing pad size of at least five (5) feet by five (5) feet, within and lower than the sides of the vessel.

4. Be able to be maneuvered in the range of water conditions expected and shall[will] enable staff to pick up a jumper or other person who has fallen into the water.

5. Have a minimum of two (2) operators: one (1) to pilot the vessel and at least one (1) other to assist jumper recovery. At least one (1) jumper recovery assistant shall be a certified life guard.

(d) If[Where] the landing area is part of a constructed swimming pool complex or is specially constructed for bungee[bungy] jumping the following shall apply:

1. The pool size shall meet the requirements for the jump area size.

2. The minimum water depth shall be nine (9) feet.

3. Rescue equipment shall be available.

4. The jump space and landing area shall be fenced.

5. Only the operators and participants of the bungee [bungy] jump shall be within the jump space and landing area.

Section 9. Site Manual. (1) Each site shall have an operating manual, referred to as the site manual, for the safe operation of the site. A copy of the manual and any amendments shall be held at each site, and shall be freely available to the staff. At[As] a minimum, the manual shall include:

(a) A site plan view of the site with all components in place, fencing, and the jump zone defined.

(b) Job descriptions or[/] position duties and responsibilities.

(c) Personnel qualifications - required and actual.

(d) Staff training procedures and documentation.

(e) Inspection/maintenance procedures - to include inspection frequency, inspection standards, follow-up actions.

(f) Equipment descriptions/certifications/test documentation.

(g) Disaster/emergency plans procedures.

(h) Accident/incident reporting procedures.

(i) Examples of forms to be used.

(j) Examples of logs to be kept.

(k) Daily preopening inspection/maintenance procedures.

(l) Jumper restrictions - age, weight, medical, physical and mental condition.

(m) No jumper below the age of eighteen (18)

(n) No signed certificate allowed for permission for under the age of eighteen (18).

(o) Jumper interview and acceptance procedures.

(p) Jumper preparation procedures.

(q) Jump procedures.

(r) Recovery procedures.

(s) Close-down procedures.

(t) State maximum weather conditions for safe operation.

(2) Any amendments to the site manual shall be approved in writing by the Kentucky Department of Agriculture, Amusement Rides and Attractions Inspection Section before implementation.

Section 10. Operations. (1) There shall be an operating public address system on site

(2) There shall be a telephone communication link to emergency medical and rescue services within a reasonable distance

(3) A sign shall be posted listing the medical, weight, and age restrictions for jumpers. The sign shall be clearly visible to intending jumpers. Letters shall not be less than one-half (1/2) inch

(4) Symbols shall not be [Symbol not] less than three and one-half (3 1/2) inches across at any point required for persons[person(s)] not able to read the English language.

(5) Owners and operators shall comply with KRS 247.236, Operation and Construction of Amusement Rides and Attractions, and 302 KAR Chapter 16 [applicable KARs will be complied with].

(a) Jumper jump area shall[will] be secured (enclosed with a mesh type fence constructed of steel, not less than five (5) feet four (4) inches in height with no opening less than two (2) inches except at gate hinge points and at locking catch and these areas only large enough for operation. Landing zone operator shall[must] clear the area during jump. Assign position or position shall[will] be marked for operator during jump.

(b) Floor shall[will] be constructed of steel If[where] no solid material - material of steel to be mesh with no opening less than one (1) inch not greater than two and one-half (2 1/2) inch opening.

(c) The jumpers shall be instructed and prepared in a place separated from the jump point.

(d) Safety type ring to frame to connect to jumper while being prepared for jump at all times.

(e) Approved scales shall[to] be used in weighing a jumper If[when] fully prepared for jump (Kentucky Department of Agriculture, Division of Weights and Measures inspection of weighing device report must be posted)

(f) Adjustments for the weight of each jumper shall be made by the jump masters selection of bungee[bungy] cord(s) and[/or] adjustment of the length of the rigging.

(g) The jump master shall stop the jumping operations If[when] the weather conditions affect the safe operation of the site.

1. Wind speed and direction indicator with readout shall[will] be at jump platform.

2. Ceases operation instruction shall[will] be posted at each site indicating limitation due to operation height and wind speeds or other factors due to weather.

(h) The mobile platform for jumping shall be a constant height above the ground or surface.

(i) All staff members shall be easily identifiable from the public or jumpers, by means of uniforms or similar clothing colors, etc.

(j) All operations and passengers on mobile platforms shall wear a safety belt or[\] harness and lanyard attached to the anchor points, at all times the platform is elevated.

(k) The jumper, on a mobile platform shall wear a safety lanyard attached to the anchor points until jump height is reached.

(l) Bungee[~~Bungy~~] "catapulting", "negative jumping", "reverse jumping" or "launching" shall be[is] prohibited.

(m) "Tandem", "double" or "multiple" jumping shall be[is] prohibited.

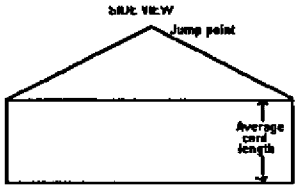
(n) "Sandbagging" shall be[is] prohibited.

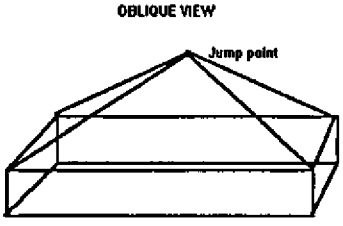
Section 11. Unacceptable Operation Activities. The following equipment shall not be used at any bungee[~~bungy~~] jumping site or facility in the Commonwealth of Kentucky:

(1) Mobile or fixed type cranes not designed, manufactured, tested, nor intended to primarily handle personnel.

(2) Lighter than air type aircraft or aircraft not regulated by the Federal Aviation Administration such as hot air balloon, blimp, helicopter or other craft that are not [~~specified that somehow have escaped to be~~] regulated by Federal Aviation Administration.

Section 12. Jump Space Diagram.





Average cord length =

$$\frac{\text{stretched length + relaxed length}}{2}$$

Cord length = length of bungee [bungy] cord + length of any rigging from jumper harness to anchor point.

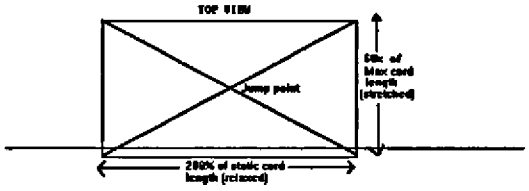
Section 13. Incorporation by Reference (1) The following material is incorporated by reference:

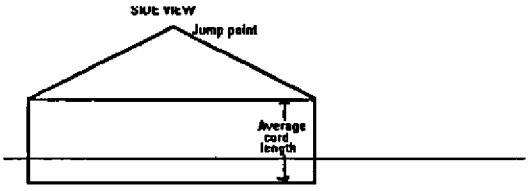
(a) "The National Fire Prevention Association (NFPA) 1983 Standard on Fire Service Life Safety Rope, Harness and Hardware", [(]1990 Edition,[)] and

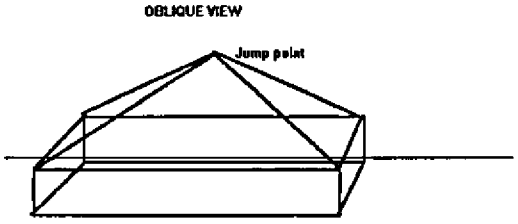
(b)[~~the~~] "Safety Air Cushion Standards", [(]1992[)~~ are incorporated by reference~~].

(2) This material may[~~The NFPA (1983) Standard on Fire Service Life Safety Rope, Harness and Hardware (1990 Edition) and the Safety Air Cushion Standards (1992) can~~] be inspected, [~~and~~] copied, or obtained, subject to copyright law, at the offices of the Division of Weights and Measures, Kentucky Department of Agriculture, Frankfort, Kentucky 40601, [~~between the hours of 8 a.m. and 4:30 p.m.~~] Monday through Friday, 8 a.m. to 4:30 p.m..

[~~ANNEX 1~~
~~JUMP SPACE DIAGRAM~~







~~Average cord length =~~

$$\frac{\text{stretched length + relaxed length}}{2}$$

~~Cord length = length of bungee [bungy] cord + length of any rigging from jumper harness to anchor point.]~~

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: February 9, 2009

FILED WITH LRC: February 10, 2009 at 4 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, April 14, 2009)

302 KAR 16:091. Rides and attractions not included in the definition of amusement ride or attraction.

RELATES TO: KRS 247.232

STATUTORY AUTHORITY: KRS 247.232

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.232(1)(b) authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations to designate other rides and attractions that are not included in the definition of "amusement ride or attraction". This administrative regulation establishes the list of rides or attractions not specifically mentioned in the statute that are not included in the definition.

Section 1. Amusement ride or attraction shall[does] not include: (1) Dinner trains;

(2) Any amusement ride or attraction utilizing animals;

(3) Structures holding slides less than fifteen (15) feet above the ground at the base of the slide;

(4) Items used strictly for educational purposes as part of a structured class or program;

(5) All terrain vehicles, paddleboats, canoes, or rafts;

(6) Haunted houses;

(7) Hay rides;

(8) Corn Mazes or any other noninflatable obstacle course;

(9) Mechanical bulls;

(10) Ski lifts, aerial lifts, or aerial tramways;

(11) Bicycles or bicycle courses;

(12) Children's toys;

(13) Watercraft other than bumper boats;

(14) Swamp buggies;

(15) Ice skating facilities;

(16) Roller skating facilities;

(17) Base jumping equipment;

(18) Paintball equipment or courses;

(19) Lazy rivers;

(20) Wave pools;

(21) Trampolines not requiring an assistive device;

(22) Self or manual belayed rappelling equipment and facilities; and

(23) Privately owned, not open to the public facilities.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: February 9, 2009

FILED WITH LRC: February 10, 2009 at 4 p.m.

CONTACT PERSON. Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, April 14, 2009)

302 KAR 16:101. Operate amusement ride or device defined.

RELATES TO: KRS 247.232

STATUTORY AUTHORITY: KRS 247.232

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.232(4) and (5) define "operator" and "operator assistant". This administrative regulation establishes the definition of operate.

Section 1. The act of "operating an amusement ride or attraction" shall mean[means] the supervision and observation of the amusement ride or attraction while in operation[,] and the normal starting and stopping of the amusement ride or attraction.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: February 9, 2009

FILED WITH LRC: February 10, 2009 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2009 at 107 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 18, 2009 five working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2009. 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: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

REGULATORY IMPACT ANAYLISIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines operating an amusement ride or attraction, and designated rides that do not require an operator.

(b) The necessity of this administrative regulation: This regulation defines operating an amusement ride or attraction. The statute places additional safety requirements on operators of rides or attractions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.232 gives the Commissioner of Agriculture the authority to designate other rides and attractions that do not require an operator. This regulation helps make clear the distinction between an operator and an operator assistant by defining the operation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines rides that do not require and operator. This will make inspections by amusement ride inspectors more efficient.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new administrative regulation.

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number or individuals, businesses, organizations, or state and local governments affected by this regulation: The administrative regulation will affect the amusement ride industry. There are approximately four hundred and sixty (460) amusement businesses in the Commonwealth.

(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, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulation defines the word operate. The businesses must comply with this definition to assure compliance with operators.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred by the businesses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The businesses will be safer and maintain records of safety that may be useful to the business.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No cost or reduced operational costs.

(b) On a continuing basis: No cost or reduced operational costs.

(6) What is the source of funding to be used for the implementation of this administrative regulation: No funding is required for the implementation 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: There will be no increase in fees with this regulation

(8) State whether or not this administrative regulation establishes any fees or directly increases any fees: This regulation will not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? No, this regulation applies equally to all amusement entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, April 12, 2009)

302 KAR 16:111. Violations, revocations, and suspensions of business identification number.

RELATES TO: KRS 247.233

STATUTORY AUTHORITY: KRS 247.233

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.233 requires the department to **promulgate administrative regulations establishing a comprehensive list of violations and civil penalties not to exceed $10,000 and the procedure for suspension and revocation of a business identification number. This administrative regulation establishes those requirements.** [~~establish a comprehensive list of violations and civil penalties not to exceed ten thousand dollars. This administrative regulation establishes a comprehensive violation and fee schedule and the procedure for suspension or revocation of a business identification number.~~]

Section 1. (1) The following acts **shall** [~~are declared to~~] be violations of KRS 247.232 through 247.236 and **302 KAR Chapter 16. Violators of these requirements** [~~the administrative regulations of this chapter, and violators of these~~] shall be accessed a civil penalty of not less than $1,000 and not more than $10,000:

(a) Operating without a current business identification number;

(b) Operating without current insurance in the required coverage amount;

(c) Operating a ride or attraction while it is under a stop operation order;

(d) **Operating a ride or attraction while the operator is not present;** [~~Operator not present during operation of ride or attraction;~~]

(e) **Using** [~~The use of~~] blocking in foot switch breaker;

(f) **Using** [~~The use of~~] improper material for electrical fuse;

(g) Moving equipment after a reportable incident or tampering with evidence;

(h) **Operating a** ride or attraction [~~operating~~] too close to high voltage;

(i) **Positioning a** ride or attraction [~~positioned~~] underneath utility lines;

(j) **Operating a ride or attraction while the operator is** [~~Operator~~] impaired;

(k) **Grounding the** generator [~~grounded~~] incorrectly;

(l) **Failing** [~~Failure~~] to maintain the ride or attraction in good mechanical condition;

(m) **Failing** [~~Failure~~] to repair ride or attraction according to manufacturer specifications or recommendations;

(n) **Failing** [~~Failure~~] to properly shield power units; **and**

(o) **Failing** [~~Failure~~] to use appropriate replacement parts.[~~;~~]

(2) The following acts **shall be violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16. Violators of these requirements shall be assessed** [~~are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be accessed~~] a civil penalty of not less than $100 and not more than $5,000:

(a) **Failing to follow safety guidelines and manufacturer specifications;** [~~Failure to follow safety guidelines (manufacturer specifications);~~]

(b) **Failing** [~~Failure~~] to notify the department of an incident requiring a report within twelve (12) hours;

(c) **Failing** [~~Failure~~] to submit a required incident report;

(d) Admitting an intoxicated patron on an amusement ride or attraction;

(e) Admitting a patron with inappropriate footwear; and

(f) **Failing** [~~Failure~~] to completely fill out incident report form.

(3) The following acts **shall be violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16. Violators of these requirements shall be assessed** [~~are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be accessed~~] a civil penalty of not less than $100 and not more than $1,000:

(a) **Failing** [~~Failure~~] to have operational manuals on site;

(b) **Failing** [~~Failure~~] to have maintenance manuals on site;

(c) **Failing** [~~Failure~~] to have maintenance records on site;

(d) Fueling ride or attraction in **an** undesignated area;

(e) Exceeding manufacturer's speed of ride or attraction;

(f) **Failing** [~~Failure~~] to properly secure the ride or attraction;

(g) **Failing** [~~Failure~~] to have electrical disconnect within six (6) feet of operator;

(h) **Operating** [~~Operation of~~] a ride or attraction by a operator under eighteen (18) years of age;

(i) **Failing** [~~Failure~~] to use correct START/STOP switch;

(j) Operating **the** ride or attraction in inclement weather;

(k) **Failing** [~~Failure~~] to comply with proper operating procedures noted during inspection;

(l) **Failing** [~~Failure~~] to properly anchor inflatable device;

(m) **Failing** [~~Failure~~] to perform or document pre-operation inspections;

(n) Operating without an itinerary; **and**

(o) Operating without the required number of operators as required by manufacturer.[~~;~~]

(4) The following acts **shall be violations of KRS 247.232 through 247.236 and 302 KAR Chapter 16. Violators of these requirements shall be assessed** [~~are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be accessed~~] a civil penalty of not less than $100 and not more than $500:

(a) Failing [~~(p) Failure~~] to have Ground Fault Circuit Interrupter (GFCI) protection **if** [~~where~~] required;

(b) Failing [~~(q) Failure~~] to properly place fencing barrier;

(c) Failing [~~(r) Failure~~] to have fire extinguishers in correct locations,

(d) Failing [~~(s) Failure~~] to have first aid kit on location; **and**

(e) Failing [~~(t) Failure~~] to have inspection sticker in appropriate location.[~~; and~~]

(5) **Failure to have ride or attraction signage or use of incorrect signage shall be a violation of KRS 247.232 through 247.236 and 302 KAR Chapter 16. Violators of these requirements shall be assessed** [~~The following acts are declared to be violations of KRS 247.232 through 247.236 and the administrative regulations of this chapter, and violators of these shall be accessed~~] a civil penalty of not less than $100 and not more than

$200[~~: Failure to have ride or attraction signage or use of incorrect signage~~]

Section 2. (1) Persons who commit the same violation within thirty (30) days of being cited for the first violation shall be assessed up to double the civil penalty accessed in Section 1 of this administrative regulation, not to exceed $10,000.

(2) Persons who commit a third same violation within sixty (60) days of being cited for the first violation shall be assessed up to triple the civil penalty accessed in Section 1 of this administrative regulation, not to exceed $10,000.

(3) **This section shall not** [~~Nothing in this section shall~~] prohibit the commissioner from suspending or revoking a license, permit, registration, or certification at any time pursuant to KRS 247.233.

Section 3. Business Identification Number Suspension or Revocation. (1) The business owner shall have ten (10) days upon the receipt of the notification of a proposed suspension, revocation, or modification of a business identification number to request a hearing The hearing shall be conducted in accordance with KRS Chapter 13B.

(2) If a hearing is not requested as provided for in subsection (1) of this section, the department may suspend, revoke, or modify the business identification number once the ten (10) day hearing request filing period has passed.

(3) The department may suspend a business identification number and place stop operation orders on all rides or attractions belonging to the owner for **a period of time which shall not exceed seven (7) days, pending inquiry.** [~~not longer than seven (7) days, pending inquiry, and,~~] After opportunity for a hearing, the department may deny, suspend, revoke, or modify the provision of any business identification number issued under KRS 247.234 if it finds that the owner or his employee has committed any of the following acts, each of which is declared to be a violation of KRS 247.232 through 247.236:

(a) **Making** [~~Made~~] a false or fraudulent statement to inspectors;

(b) Knowingly **violating** [~~violated~~] any provision of KRS 247.232 through **247.236 or 302 KAR Chapter 16** [~~236 or any administrative regulations promulgated thereunder~~]; or

(c) **Failing to pay an** [~~Failed to pay a~~] administrative penalty or fee assessed by this chapter.

(4) Any owner whose business identification number is revoked under the provisions of this section shall not be eligible to apply for a new license until the time has elapsed from the date of the order revoking the business identification number as established by the department, not to exceed two (2) years, or if an appeal is taken from the order or revocation, not to exceed two (2) years from the date of the order or final judgment sustaining the revocation.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009
FILED WITH LRC: February 13, 2009 at 10 a m.
CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, April 14, 2009)

302 KAR 16:121. Inflatable rides or attractions.

RELATES TO: KRS 247.236**(1)**
STATUTORY AUTHORITY: KRS 247.236
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.236**(1) requires the department of Agriculture to promulgate administrative regulations establishing safety requirements in the absence of factory specification. This administrative regulation establishes requirements for operation** [~~requires amusement rides or attractions to be operated within factory specifications. This regulation establishes requirements and suggestions for operation~~] of inflatable rides or attractions when manufacturer specifications are not available.

Section 1. Inflatable rides and attractions **shall**[~~do~~] not require an operator.

Section 2. Only inflatable devices manufactured specifically for commercial use shall be used for commercial or rental purposes.

Section 3. Inflatable devices shall be anchored to the ground with rods or pins with at least one half inch diameter, at a minimum depth of 18 inches, and at a forty-five (45) degree angle to the ground. If pins or rods are impracticable, seventy-five (75) pounds of sandbags **shall**[~~are~~] to be used at each anchor point.

Section 4. Safety signage **shall be**[~~is~~] required if not printed by the manufacturer on the inflatable. If the following information is not printed on an inflatable, the owner **shall**[~~must~~] provide a sign to display near the entrance of the inflatable while it is in operation with the following information, in its entirety:

(1) Remove shoes, eyeglasses and sharp objects before entering;

(2) No flips;

(3) No piling on or wrestling;

(4) Do not bounce closer than five feet from another person; and

(5) Do not bounce against the sides or near the doorway.

Section 5. All inflatable devices **shall**[~~must~~] use ground fault circuit interrupters for electrical components.

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009
FILED WITH LRC: February 10, 2009 at 4 p.m.
ONTACT PERSON. Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, April 14, 2009)

302 KAR 16:131. Maintenance and repair of amusement ride or attractions.

RELATES TO: KRS 247.2351
STATUTORY AUTHORITY: KRS 247 2351
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.2351 requires the Department of Agriculture to **promulgate administrative regulations establishing** [~~establish~~] replacement part guidelines for amusement rides and attractions This administrative regulation establishes those guidelines.

Section 1. All amusement rides and attractions shall be maintained in good electrical and mechanical condition. The owner of an amusement ride or attraction shall follow the manufacturer's guidelines and recommendations for all maintenance procedures.

Section 2. Replacement parts (1) Amusement rides and attractions shall use manufacturer replacement parts, or replacement parts approved by the manufacturer, if available.

(2) If an amusement ride or attraction manufacturer is no longer in business or the manufacturer's parts are no longer available, replacement parts **shall**[~~must~~] meet the manufacturers original equipment specifications.

(3) If an amusement ride or attraction is unique or hand made, the owner **shall be deemed the manufacturer for purposes of these requirements** [~~is deemed to be the manufacturer~~].

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: February 9, 2009

FILED WITH LRC: February 10, 2009 4 p.m.
CONTACT PERSON. Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

GENERAL GOVERNMENT
Department of Agriculture
Division of Regulation and Inspection
(As Amended at ARRS, April 14, 2009)

302 KAR 16:140. Amusement rides or attractions not requiring an operator.

RELATES TO: KRS **247.236** [~~247.232~~]
STATUTORY AUTHORITY: KRS **247.236(5)(c)** [~~247.232~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS **247.236(5)(c)** [~~247.232(1)(b)~~] authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations to designate other rides and attractions that **do not require an operator** [~~are not included in the definition of "amusement ride or attraction"~~]. This administrative regulation establishes the list of rides or attractions not requiring an operator.

Section 1. The following amusement **rides or attractions shall** [~~ride or attraction does~~] not require an operator:
(1) Playports; and
(2) Inflatables

RICHIE FARMER, Commissioner
APPROVED WITH LRC: February 9, 2009
FILED WITH LRC: February 10, 2009 at 4 p m.
CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 500 Mero Street, 7th Floor, Frankfort Kentucky 40601, phone (502) 564-1155, fax (502) 564-2133.

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, April 14, 2009)

785 KAR 1:010. GED Testing Program.

RELATES TO: KRS **151B.125(1)(a)**[~~151B.125~~]
STATUTORY AUTHORITY: KRS **151B.125(1)(a)**[~~151B.023~~], 151B.410[~~, EO 2004-725~~]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.410(1) requires the Kentucky[~~Department for~~] Adult Education Program [~~and literacy~~] to administer a statewide adult education and literacy program, and to promulgate [~~necessary~~] administrative regulations to effect this mandate[~~and administer a statewide adult education and literacy system throughout the state~~].[~~KRS 151B.023 requires Kentucky][the Department for][Adult Education][and literacy][to implement a][the][twenty (20) year state strategy to reduce the number of adults at the lowest levels of literacy and most in need of adult education and literacy services~~] KRS 151B.125 recognizes the Tests of General Educational Development or GED Tests[~~test~~] for high school equivalency purposes in Kentucky **and authorizes Kentucky Adult Education to establish fees for the issuance of a duplicate high school equivalency diploma and for issuance of a duplicate score report**. [~~EO 2004-725 abolished the Department for Adult Education and Literacy and transferred its duties to the Council on Postsecondary Education~~] This administrative regulation establishes the procedure for testing an adult for the GED diploma.

Section 1. Test Purpose. The GED Tests[~~test~~] shall provide a valid means of measuring the educational achievement of an adult who is a nonhigh school graduate and of comparing the adult's competency to[~~with~~] that of high school graduates. The tests[~~test~~] shall be a high school level battery consisting of five (5) comprehensive examinations covering:
(1) Language arts, writing;
(2) Social studies;
(3) Science;
(4) Language arts, reading; and
(5) Mathematics.

Section 2. Test Centers. Official GED testing centers shall be established under contract with the GED Testing Service. Kentucky Adult Education shall authorize the location of these centers.

Section 3. Test Scores. (1) Kentucky Adult Education shall:
(a) Administer the scoring of the tests;
(b) Accept scores as official if reported by:
1. A state, territorial, or provincial department of education;
2. A GED testing center;
3. The GED Testing Service; or
4. The Defense Activity for Nontraditional Education Support, DANTES[~~,~~] (as the repository of score reports issued by the U.S. Armed Forces Institute).
(2) **In order for an applicant to be issued a Commonwealth of Kentucky High School Equivalency Diploma and an official GEDtranscript,** an applicant shall achieve[~~score~~] the minimum standard score on each subtest and the minimum overall average score on the Official GED Tests[~~Test~~] as set by GED Testing Service [~~If an applicant passes the five (5) subtests with a minimum standard test score on each subtest, but does not attain an overall average standard score, the student][he][shall be eligible to retake any subtest][in an attempt to raise the overall standard score~~]

Section 4. GED Diploma. Kentucky Adult Education shall provide a high school equivalency diploma to an applicant who meets all the provisions of this administrative regulation and the eligibility requirements established by 785 KAR 1:130.

Section 5. Test Fees. (1) **For test on or before June 30, 2009, the testing fee shall be a uniform fee of:**
(a) Forty (40) dollars, if the applicant is taking all five (5) subtestS in a test session; or
(b) Ten (10) dollars per subtest, except as provided in subsection (5) of this section.
(2) Effective July 1, 2009, The testing fee shall be a uniform fee of:
(a) Fifty (50)[~~Forty (40)~~] dollars, if the applicant is taking all five (5) subtests in a test session; or
(b) Twenty-five (25)[~~Ten (10)~~] dollars per subsession, **except as provided in subsection (5) of this section** [~~subtest. The testing fee shall be a uniform fee of forty (40) dollars per test or ten (10) dollars per subtest~~]
(3)[~~(2)~~] Effective July 1, 2010, the testing fee shall be a uniform fee of:
(a) Fifty-five (55) dollars, if the applicant is taking all five (5) subtests in a test session; or
(b) Twenty-five (25) dollars per subsession, **except as provided in subsection (5) of this section.**
(4)[~~(3)~~] Effective July 1, 2011, the testing fee shall be a uniform fee of:
(a) Sixty (60) dollars, if the applicant is taking all five (5) subtests in a test session; or
(b) Thirty (30) dollars per subsession, **except as provided in subsection (5) of this section.**
(5)[~~(4)~~] A person who retests shall be assessed the fee **established in subsection**[~~contained in~~] subsection (1)(b), (2)(b), or (3)(b) of this section as appropriate to the date of the retest, but subject to the limitation that the total amount assessed shall not exceed the limit **established in subsection**[~~contained in~~] subsection (1)(a), (2)(a), or (3)(a) of this Section regardless of the number of subsession retests attempted.
(6)[~~(5)~~] A request for a duplicate[~~transcript~~] or diploma shall be in writing and shall carry the signature, birth date, and Social Security number of the examinee and shall be accompanied by the payment of:
(a) A ten (10)[~~five (5)~~] dollar processing fee assessed for the issuance of a duplicate transcript request; or
(b) A twenty-five (25) dollar fee assessed for the issuance of a duplicate diploma.

JOHN TURNER, Chair

DENNIS L. TAULBEE, General Counsel
APPROVED BY AGENCY: October 3, 2008
FILED WITH LRC: October 6, 2008 at 1 p.m.
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LABOR CABINET
Department of Workplace Standards
Division of Employment Standards,
Apprenticeship and Mediation
(As Amended at ARRS, April 14, 2009)

803 KAR 1:010. Registration of apprenticeship programs.

RELATES TO: KRS Chapter 343
STATUTORY AUTHORITY: KRS 343.020
NECESSITY, FUNCTION, AND CONFORMITY: KRS 343 020 authorizes the executive director with the aid of the **Apprenticeship and Training Council to promulgate**[~~Council to make~~] administrative regulations to carry out the provisions and purposes of KRS Chapter 343. [~~The function of~~]This administrative regulation **establishes**[~~is to set forth~~] labor standards to safeguard the welfare of apprentices[~~,~~] and to extend the application of **those**[~~such~~] standards by prescribing policies and procedures concerning the registration of acceptable apprenticeship programs with the Kentucky Office of Workplace Standards, Supervisor of Apprenticeship and Training These labor standards cover the registration, cancellation, and deregistration of apprenticeship programs and of apprenticeship agreements

Section 1. Definitions. [~~As used in these administrative regulations, unless the context clearly requires otherwise~~](1) "Apprentice" **is defined by KRS 343.010(1).**[~~means a person at least sixteen (16) years of age who has entered into an apprenticeship agreement with an employer or an association of employers or an organization of employees;~~]

(2) "Apprenticeship agreement" **is defined by KRS 343.010(2).**[~~means a voluntary written agreement entered into by the apprentice or through his parent or guardian with an employer, or an apprenticeship and training committee acting as agent for an employer, which agreement contains the terms and conditions of the employment and training of the apprentice to enable the apprentice to learn the trade, craft or business of the employer;~~]

(3) "Apprenticeship program" **is defined by KRS 343.010(7).**[~~means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, including such matters as the requirement for a written apprenticeship agreement;~~]

(4) "Bureau" means the Bureau of Apprenticeship and Training, Employment and Training Administration, United States Department of Labor.[~~;~~]

(5) "Council" **is defined by KRS 343.010(4).**[~~means apprenticeship and training council;~~]

(6) "Employer" **is defined by KRS 343.010(10).** [~~means any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice;~~]

(7) "Executive director" **is defined by KRS 343.101(3)** [~~means the Executive Director of Workplace Standards, Labor Department, or any authorized person to act in his behalf, having jurisdiction over laws or administrative regulations governing wages and hours of employees working in this state;~~]

(8) **"Joint apprenticeship committee" means a committee, composed of an equal number of representatives of employers and employees, which has been established by an employer or group of employers and a bona fide collective bargaining agent or agents to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices selected for employment under the particular program.**[~~;~~]

(9) "Nonjoint apprenticeship sponsor" means an apprenticeship program sponsor in which a bona fide collective bargaining agent does not participate**, such as:**

(a) An individual nonjoint sponsor, i.e., an apprenticeship program sponsored by one (1) employer without the participation of a union; and

(b) A group nonjoint sponsor, i.e., an apprenticeship program sponsored by two (2) or more employers without the participation of a union.[~~; it includes an individual nonjoint sponsor (apprenticeship program sponsored by one (1) employer without the participation of a union) and a group nonjoint sponsor (apprenticeship program sponsored by two (2) or more employers without the participation of a union);~~]

(10) "Registration of an apprenticeship program" means the acceptance and recording of **the program by the supervisor, which confirms that the program meets the basic standards and requirements for approval as indicated by written evidence.** [~~such program by the supervisor, as meeting the basic standards and requirements for approval of such program. Approval is evidenced by written indicia;~~]

(11) "Related instruction" **is defined by KRS 343.010(11).**[~~means an organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to his trade;~~]

(12) "Sponsor" **is defined by KRS 343.010(9).**[~~means any person, association, committee, or organization in whose name or title the program is or is to be registered, irrespective of whether such entity is an employer;~~]

(13) "Supervisor" **is defined by KRS 343.010(5)**[~~means supervisor of apprenticeship and training~~].

Section 2. (1) **An apprenticeship program shall not**[~~No apprenticeship program shall~~] be eligible for registration unless:

(a) it is in conformity with the requirements of this administrative regulation and the training is in an apprenticeable occupation approved by the Bureau; and

(b) it is in conformity with the regulations on "Equal Employment Opportunity in Apprenticeship and Training" set forth in 29 C.F.R. Part 30, as amended, and Kentucky law on "Equal Employment Opportunity in Apprenticeship and Training" set forth in KRS Chapter 344.

(2) Approved apprenticeship programs shall be accorded registration, evidenced by a certificate of registration or other written indicia.

(3) Any modification or change to a registered program shall be promptly submitted to the registration office and, if approved, shall be recorded and acknowledged as an amendment to **the**[~~such~~] program.

(4) The request for registration of an apprenticeship program, together with all documents and data required by this administrative regulation, shall be submitted in three (3) copies.

(5)**(a) If a program is proposed for registration by an employer or employers' association, written acknowledgement of union agreement or "no objection" to the registration shall be required if:**

1. The standards, collective bargaining agreement, or other instrument provides for participation by a union in any manner in the operation of substantive matters of the apprenticeship program; and

(b) If union participation is not evidenced and practiced, the employer or employers' association shall simultaneously furnish a copy of the apprenticeship program and its application for registration to the union collective bargaining agent, if any, of the employees to be trained.

(c) The supervisor shall provide a reasonable time period of not less than thirty (30) days nor more than sixty (60) days for receipt of any union comments before final action on the approval.[~~Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument, provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgment of union agreement or "no objection" to the registration is required. Where no such participa-~~

~~tion is evidenced and practiced, the employer or employers' association shall simultaneously furnish to the union, if any, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The supervisor shall provide a reasonable time period of not less than thirty (30) days nor more than sixty (60) days for receipt of union comments, if any, before final action on the approval.~~]

(6) If[Where] the employees to be trained have no collective bargaining agent, an apprenticeship program may be proposed for registration by an employer or group of employers.

Section 3. The following standards shall apply to[are prescribed for] an apprenticeship program:

(1) The program shall[must] be an organized, written plan embodying the terms and conditions of qualification, recruitment, selection, employment, training, and supervision of one (1) or more apprentices in an apprenticeable occupation and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(2) The standards shall[must] contain the equal opportunity pledge prescribed in the Kentucky State Plan for equal employment opportunity in apprenticeship and, if[when] applicable, an affirmative action plan and a selection method in accordance with the Kentucky State Plan for equal employment opportunity in apprenticeship, and provisions concerning the following:

(a) The employment and training of the apprentice in a skilled trade;

(b) A term of apprenticeship, not less than 2,000 hours of work experience, consistent with training requirements as established by industry practices;

(c) An outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(d) Provision for organized related and supplemental instruction in technical subjects related to the trade. A minimum of 144 hours for each year of apprenticeship shall be required. The[is required. Such] instruction may be given in a classroom, through trade, industrial, or correspondence courses of equivalent value, or other forms of approved self-study;

(e) A progressively increasing schedule of wages to be paid the apprentice consistent with the skill acquired and whether the required school time shall be compensated. The entry wage shall not be less than forty (40) percent of the established journeyman rate or not less than the minimum wage prescribed by federal or state law, whichever is greater. On projects where the wage rate has been established by law, the apprentice's rate of pay shall be based upon the established journeyman rate;

(f) Periodic review and evaluation of the apprentice's progress in job performance and related instruction[;] and maintenance of appropriate progress records;

(g) The ratio of apprentices to journeymen consistent with proper supervision, training, and continuity of employment, and applicable provisions in collective bargaining agreements, but in a ratio of not more than one (1) apprentice for the first journeyman, and one (1) apprentice for each additional three (3) journeymen; unless approval is granted by the supervisor in cooperation with the executive director and Apprenticeship and Training Council;

(h) A probationary period of not more than four (4) months during which the apprenticeship agreement may be terminated by either party, with full credit for this[such] period toward completion of apprenticeship;

(i) Adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction;

(j) Grant of advance standing or credit for previously acquired experience, training skills, or aptitude for all applicants equally, with commensurate wages for any accorded progression step;

(k) Transfer of employer's training obligation to another employer, if[where] warranted, with full credit to apprentice for satisfactory time and training earned;

(l) Assurance of qualified training personnel;

(m) The placement of an apprentice under an apprenticeship agreement as required by KRS Chapter 343 and 803 Chapter 1[the state apprenticeship law and administrative regulations]. The agreement shall directly, or by reference, incorporate the standards of the program as part of the agreement;

(n) The required minimum qualifications for persons entering an apprenticeship program, with an eligible starting age to be not less than sixteen (16) years;

(o) Recognition for successful completion of apprenticeship evidenced by an appropriate certificate;

(p) Identification of the registration agency;

(q) Name and address of the appropriate authority under the program to receive, process, and make disposition of complaints;

(r) Recording and maintenance of all records concerning apprenticeship as may be required by the state apprenticeship agency or other applicable law; and

(s) Provision that all controversies or differences shall be resolved in accordance with KRS 343.050(8)[concerning the apprenticeship agreement which cannot be adjusted by the parties to be submitted to the supervisor for determination as required by law].

Section 4. The apprenticeship agreement shall contain explicitly:

(1) The information required by KRS 343.050;[Names and signatures of the contracting parties (apprentice, and the program sponsor or employer), and the signature of a parent or guardian if the apprentice is a minor;]

(2) The signatures required by KRS 343.060[The date of birth of apprentice];

(3) Name and address of the program sponsor and registration agency;

(4) A reference incorporation as part of the agreement standards of the apprenticeship program as it exists on the date of the agreement and as it may be amended during the period of the agreement; and

(5) A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, national origin, sex, or age.[A statement of the trade, craft or business in which the apprentice is to be trained, and the beginning date and term of apprenticeship;

(5) A statement showing the number of hours to be spent by the apprentice in work on the job, and the number of hours to be spent in related and supplemental instruction;

(6) A statement setting forth a schedule of the work processes in the trade or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process;

(7) A statement of the graduated scale of wages to be paid the apprentice and whether or not the required school time shall be compensated;

(8) A statement providing for a period of probation of not more than four (4) months during which the apprenticeship agreement may be terminated by either party to the agreement upon written notice to the registration agency, and that after the probationary period, the agreement may be suspended, cancelled, or terminated by the supervisor by mutual agreement of the parties, or by the supervisor for good and sufficient reason, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the sponsor of the final action taken;

(9) A reference incorporating as part of the agreement the standards of the apprenticeship program as it exists on the date of the agreement and as it may be amended during the period of the agreement.

(10) A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, or sex][or age between forty (40) and sixty-five (65)].

Section 5. Deregistration of a program may be initiated upon the voluntary action of the sponsor by request for cancellation of the registration, or upon a finding of good and sufficient reason by the supervisor instituting formal deregistration proceedings in accordance with the provisions of this section.

(1) Request by sponsor. The supervisor may cancel the regis-

tration of an apprenticeship program for good and sufficient reason by written acknowledgment of the[,of such] request stating, but not limited to, the following matters:

(a) The registration is cancelled at sponsor's request, the reason for the cancellation[thereof], and effective date; and[thereof,]

(b) That, within fifteen (15) days of the date of the acknowledgment, the sponsor shall notify all apprentices:

1. Of the cancellation, the reason for the cancellation, and the effective date;

2. That the cancellation automatically deprives the apprentice of individual registration; and

3. That the deregistration of the program removes the apprentice from coverage for state and federal purposes.[of such cancellation the reason thereof, and the effective date; that such cancellation automatically deprives the apprentice of his/her individual registration; and that the deregistration of the program removes the apprentice from coverage for state and federal purposes.]

(2) Formal deregistration. Deregistration proceedings may be undertaken If[when] the apprenticeship program is not conducted, operated, and administered in accordance with the registered provisions or the requirements of this administrative regulation, except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with the provisions in the Kentucky State Plan for equal employment opportunity in apprenticeship.

(a) If[Where] it appears the program is not being operated in accordance with the registered standards or this administrative regulation, the supervisor shall so notify the program sponsor in writing. The notice shall be sent by certified mail, with return receipt requested. The notice shall state the violations and the remedy required, and that a determination of reasonable cause for deregistration will be made unless corrective action is effected within fifteen (15) days. Upon request by the sponsor for good cause, the fifteen (15) day term may be extended by the supervisor. During the period for correction, the sponsor shall be assisted in every reasonable way to achieve conformity. If the required correction is not effected within the allotted time, the supervisor shall send a notice to the sponsor, by certified mail, return receipt requested, stating the following:

1. The notice is sent pursuant to this section;

2. Certain deficiencies (stating them) were called to sponsor's attention and remedial measures requested, with dates of the[such] occasions and letters; and that the sponsor has failed or refused to effect correction; and

3. Based upon the stated deficiencies and failure of remedy, a determination of reasonable cause has been made and the program may be deregistered unless, within fifteen (15) days of the receipt of this notice, the sponsor requests a hearing.

(b) If a request for a hearing is not made, the supervisor shall[will] issue a determination with respect to deregistration of the program.[;]

(c) If the sponsor has not requested a hearing, the supervisor shall[will] file his determination with the executive director. This determination shall contain all pertinent facts and circumstances concerning the nonconformity, including the findings and copies of all relevant documents and records.[;]

(d) The supervisor's determination shall become final in accordance with KRS 343.070.[If no appeal is filed with the executive director within fifteen (15) days of the receipt of the supervisor's determination, the determination of the supervisor shall become final;]

(e) If the sponsor requests a hearing, the executive director shall[will] convene a hearing after due notice to the parties and shall make a final decision on the basis of the record before him.[;]

(f) Any party to the dispute aggneved by the order or decision of the executive director may appeal in accordance with KRS 343.070.

Section 6. Any apprenticeship programs and standards of employers and unions in other than the building and construction industry, which jointly form a sponsoring entity on a multistate basis and are registered pursuant to all requirements of this administrative regulation by any recognized state apprenticeship agency or by the bureau, shall be accorded registration or approved reciprocity by the supervisor if this[such] reciprocity is requested by the sponsoring entity.

J.R. GRAY, Secretary

APPROVED BY AGENCY: January 8, 2009

FILED WITH LRC: January 12, 2009 at 11 a.m.

CONTACT PERSON: Dan Walton, Acting Executive Director, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070.

LABOR CABINET
Department of Workplace Standards
Division of Employment Standards, Apprenticeship and Mediation
(As Amended at ARRS, April 14, 2009)

803 KAR 1:120. Prevailing wage posting requirements.

RELATES TO: KRS. 337.520(1)[337.530]

STATUTORY AUTHORITY: KRS 337.530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.520(1) authorizes the executive director to promulgate administrative regulations to carry out the provisions and purposes of KRS 337.505 to 337.550 and to prevent their circumvention or evasion.[337.530(3) requires public works contractors and subcontractors to post in a conspicuous place at the site of the construction work a copy of the prevailing rates of wages and working hours prescribed in the contract with the public authority.] This administrative regulation clarifies the prevailing wage requirements of KRS 337.530[statute's requirements] and specifies that translated rates be posted if non-English speaking employees are on the construction site. This administrative regulation imposes different requirements than federal law. Federal law does not require posting of wage rates and hours at the primary site entrance, and does not require the posting of translated rates where non-English speaking persons are present. Employers can differ as to what is considered a conspicuous place or places within the meaning of the statute. By requiring that the rates be posted at least at the primary site entrance, this administrative regulation will assist employers in complying with the posting requirement. In addition, non-English speaking construction employees are increasing in numbers; the requirement that translated rates be posted provides a clear benefit to non-English speaking employees.

Section 1. Posting of the Wage Rates for Public Projects shall comply with KRS 337.530(3). The posting shall be in a conspicuous place and at a minimum shall appear in the open at the primary project site entrance. The method of posting shall be of sufficient size for each page of the rates to be visible without overlapping.

Section 2. Posting shall be legible and readily accessible to anyone on the job site. If non-English speaking employees are present on the job site, translated rates shall be furnished by the Labor Cabinet and posted along side the rates.

Section 3. Any contractor or subcontractor performing work on the project who does not post the rates shall be[deemed] in violation of KRS 337.530(3). Civil money penalties shall be issued for all violations subsequent to the first violation, in accordance with KRS 337.990.

J.R. GRAY, Secretary

APPROVED BY AGENCY: January 8, 2009

FILED WITH LRC: January 12, 2009 at 11 a.m.

CONTACT PERSON: Dan Walton, Acting Executive Director, Kentucky Labor Cabinet, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070.

LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, April 14, 2009)

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS 342 020, 342.035, 342.315
STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the Executive Director of the Office of Workers' Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. EO 2008-472, effective June 2, 2008, reorganized the Office of Workers' Claims as the Department of Workers' Claims and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes[regulates] hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) **"Ambulatory surgery center" means a public or private institution that is:**
(a) Hospital based or freestanding;
(b) Operated under the supervision of an organized medical staff; and
(c) Established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.
(2) "Hospital" means a facility, surgical center, or psychiatric, rehabilitative or other treatment or specialty center which is licensed pursuant to KRS 216B.105.
(3)[(2)] "Hospital-based practitioner" means a provider of medical services who is an employee of the hospital and who is paid by the hospital.
(4)[(3)] "Independent practitioner" means a physician or other practitioner who performs services that are covered by the Workers' Compensation Medical Fee Schedule for Physicians on a contract basis and who is not a regular employee of the hospital.
(5)[(4)]["Unbundling" means the practice of submitting separate bills for services to a payor pursuant to this administrative regulation which are billed to payers other than pursuant to this administrative regulation on a global basis.
(6) "Global basis" means the practice of submitting a bill for two (2) or more services as one (1) item.
(6)] "New hospital" means a hospital which has not completed its first fiscal year.
[(5) "Ambulatory surgery center" means a public or private institution that is:
(a) Hospital based or freestanding;
(b) Operated under the supervision of an organized medical staff; and
(c) Established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.]

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital fees for each hospital for each compensable service or supply[provided on or after February 2, 1993] [the effective date of this administrative regulation.]

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1)(a) A hospital's base cost-to-charge ratio shall be based on the latest cost report, or HCFA-2552, which has been supplied to the Cabinet for Health and Family Services, Department of Medicaid Services, pursuant to 907 KAR 1:815 [376] and utilized in 907 KAR 1:820 and 1 825 [907 KAR 1 013] on file as of October 31 of each calendar year.
(b) The base cost-to-charge ratio shall be determined by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95, plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 12, 13, and 35 of Worksheet A-8, by the total patient revenues as reflected on Worksheet G-2 of the HCFA-2552. The adjusted cost-to-charge ratio shall be determined as set forth in paragraph (c) of this subsection.
(c)1.[(2)] The base cost-to-charge ratio shall be further modified to allow for a return to equity by multiplying the base cost-to-charge ratio by 132 percent except that a hospital with more than 400 licensed acute care beds as shown by the **Cabinet for Health and Family Services,** Office of Inspector General's Web site or a hospital that is designated as a Level I trauma center by the American College of Surgeons shall have a return to equity by multiplying its base cost-to-charge ratio by 138 percent.
2. If a hospital's base cost-to-charge ratio falls by ten (10) percent or more of the base for one (1) reporting year,[then] the next year's return to equity shall be reduced from 132 percent to 130 percent or 138 percent to 135 percent as determined by **subparagraph 1. of this paragraph.**
a. This reduction shall be[paragraph (c)1. of this subsection. This reduction is] subject to an appeal pursuant to Section 4 of this administrative regulation.
b. Upon written request of the hospital seeking a waiver and a showing of extraordinary circumstances the commissioner may waive the reduction for no more than one (1) consecutive year.
c. The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.
(d)1. Except as provided in subparagraph 2 of this paragraph, a hospital's adjusted cost-to-charge ratio shall not exceed fifty (50) percent, including the return to equity adjustment.
2. The adjusted cost-to-charge ratio shall not exceed sixty (60) percent for a hospital that:
a. Has more than 400 licensed acute care beds **as shown by the Cabinet for Health and Family Services, Office of Inspector General's Website;**
b. Is designated as a Level I trauma center by the American College of Surgeons; [or]
c. Services sixty-five (65) percent or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health and Family Services, Department of Medicaid Services; **or**[.]
d. Has a base cost-to-charge ratio of fifty (50) percent or more.
(2)(a) Except as provided in paragraph (b) of this subsection, the [addition of twelve (12) percentile
(3) A hospital's adjusted cost-to-charge ratio shall not exceed eighty-five (85) percentile, including the twelve (12) percentile addition, except for a hospital that services seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health Services, Department of Medicaid Services. The adjusted cost-to-charge ratio for a hospital that services seventy (70) percentile or more patients covered and reimbursed by Medicaid or Medicare shall not exceed ninety-seven (97) percentile.
(4) The] reimbursement to a hospital for services or supplies furnished to an employee which are compensable under KRS 342.020 shall be calculated by multiplying the hospital's total [allowable] charges by its adjusted cost-to-charge ratio after removing any duplicative charges, **billing errors, or charges**[or billing errors/charges] for services or supplies not confirmed by the hospital **records**[chart].
(b) If part of a bill for services or supplies is alleged to be non-compensable under KRS 342 020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion to reopen, the non-contested portion of the bill shall be paid in accordance with paragraph (a) of this subsection.

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this administrative regulation shall be notified of its proposed base cost-to-charge ratio by the commissioner[executive director] by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Commissioner[Executive Director] of the Department [Office] of Workers' Claims.
(2)(a) A hospital may request a review of its assigned ratio by filing a written appeal with the commissioner[executive director] no

later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

(b) The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

Section 5. Revision of Hospital Cost-to-charge Ratio. (1)(a) The commissioner [~~executive director~~] shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year.

(b) A new hospital shall be assigned a cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals [~~of eighty (80) percentile~~] until it has been in operation for one (1) full fiscal year

(c) A hospital that does not file Worksheets A and G-2 of HCFA 2552 shall be assigned a cost-to-charge ratio as follows:

1. A psychiatric, rehabilitation, or long-term acute care hospital shall be assigned a cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all in-state acute care hospitals;

2. An ambulatory surgery center shall be assigned a cost-to-charge ratio equal to:

a. Seventy (70) percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the ambulatory surgery center; or

b. If no acute care hospital is located in the county of the ambulatory surgery center, seventy (70) percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in counties contiguous to the county in which the ambulatory surgery center is located; or

c. The adjusted cost-to-charge ratio of the **base hospital if:**

i. The center is hospital based;

ii. Is a licensed ambulatory surgery center pursuant to 902 KAR 20:105; and

iii.[~~hospital if the center is hospital based and is a licensed ambulatory surgery center or outpatient facility and~~] is a Medicare provider based entity; and

3. All other hospitals not specifically mentioned in subparagraphs 1 **or**[~~and~~] 2 of this paragraph shall be assigned a cost-to-charge ratio equal to:

a. The average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the facility; or

b. If there are no hospitals in the county, the average of all acute care hospitals located in contiguous counties [~~of eighty (80) percentile~~].

(2) An assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the commissioner [~~executive director~~].

Section 6. Calculation for Hospitals and Ambulatory Surgery Centers Located Outside the Commonwealth of Kentucky (1) A hospital **or**[~~and~~] ambulatory surgery center located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA 2552.

(3) **An** out-of-state ambulatory surgery **center**[~~centers~~] having no contiguous Kentucky counties shall be assigned a cost-to-charge ratio equal to seventy (70) percent of the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals.

(4) An out-of-state ambulatory surgery center having one (1) or more contiguous Kentucky counties shall be assigned a cost-to-charge ratio in accordance with Section 5(1)(c)2.b. of this administrative regulation.

Section 7. Reports to be Filed by Hospitals. Each bill submitted by a hospital pursuant to this administrative regulation shall be submitted on a statement for services, Form UB-04 (Formerly UB-92), [~~uniform billing form~~] as required by 803 KAR 25.096 [~~pursuant to KRS Chapter 216~~].

Section 8. Billing and Audit Procedures (1) A hospital providing the technical component of a procedure shall bill and be paid for the technical component.

(2)(a) An independent practitioner providing the professional component shall bill for and be paid for the professional component.

(b) An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate statement for services, HCFA 1500, as [~~billing form~~] required by 803 KAR 25.096 [~~pursuant to KRS Chapter 216~~].

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the commissioner [~~executive director~~] setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation

(2)(a) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the statement for services [~~forms~~] **defined**[~~required~~] by 803 KAR 25:096 [~~pursuant to KRS Chapter 216~~] when billing for professional services and shall be compensated pursuant to the **Kentucky** Workers' Compensation [~~Kentucky~~] Medical Fee Schedule for Physicians incorporated by reference in [~~adopted pursuant to~~] 803 KAR 25:089.

(b) An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital.

(c) The hospital may bill for the professional component of the service under the **Kentucky** Workers' Compensation Medical Fee Schedule for Physicians if the independent practitioner is directly compensated for services by the contracting hospital [~~in those circumstances~~].

(3) A hospital-based practitioner shall not bill for a service he performs in a hospital if the service is regulated by 803 KAR 25:089, but he shall receive payment or salary directly from the employing hospital. [~~(4) Unbundling shall not be practiced.~~]

Section 10. Incorporation by Reference. (1)The following material is incorporated by reference:

(a) Form UB-40, 10-23-06; and

(b) HCFA 1500, 12-90.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DWIGHT T. LOVAN, Commissioner

APPROVED BY AGENCY: March 12, 2009

FILED WITH LRC: March 12, 2009 at 3 p.m.

CONTACT PERSON Thomas A. Dockter or Karen T. Meier, Staff Attorneys, Office of General Counsel, Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, fax (502) 564-0681.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(As Amended at ARRS, April 14, 2009)

810 KAR 1:012. Horses.

RELATES TO: KRS 230.215, EO 2008-668

STATUTORY AUTHORITY. KRS 230.215, 230.260(3), EO 2008-668

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Kentucky Horse Racing **Authority**[~~Commission~~] to promulgate administrative regulations regulating horse racing in Kentucky **EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the Commission.** This administrative regulation establishes requirements for the participation of horses in horse race meetings.

Section 1. Registration Required (1) Except as provided by

subsection (2) of this section, a horse shall not be entered or raced in this state unless:

(a) Duly registered and named in the registry office of the Jockey Club in New York, and

(b) The registration certificate or racing permit issued by the Jockey Club for the horse is on file with the racing secretary.

(2) The stewards may for good cause waive this requirement if the horse is otherwise correctly identified to the stewards' satisfaction.

(3) The Jockey Club registration certificate of each horse shall be filed with the horse identifier within forty-eight (48) hours after the horse's arrival on the association grounds.

Section 2. Ringers Prohibited. (1) A horse shall not be entered or raced in this state designated by a name other than the name under which the horse is currently registered with the Jockey Club in New York If a horse's name is changed by the Jockey Club, the horse's former name shall be shown parenthetically in the daily race program the first three (3) times the horse races after the name change.

(2) A person shall not cause or permit the correct identity of a horse to be concealed or altered. A person shall not refuse to reveal the correct identity of a horse he owns, or which is in his care, to a racing official or member of the regular news media.

(3) A horse shall not race in this state unless the horse has:

(a)[~~without~~] A legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau; or

(b) An electronic horse identification microchip which accurately identifies the horse and is compliant with the international standards ISO 11784

(4) A horse shall not be entered or raced in this state if previously involved in a "ringer" case to the extent that:

(a) A person having control of the horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with the Jockey Club; or

(b) The person having control of the horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

Section 3 Denerving (1) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate or racing permit. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the trainer of the denerved horse to ensure that fact is designated on the registration certificate or racing permit.

(2) A horse whose ulnar, radial, or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed bilaterally, shall not be entered or raced in this state.

(3) A horse whose volar or plantar nerve has been removed unilaterally or which has had a posterior digital neurectomy (known as low nerved), may be permitted to race if the deserving has been reported by the trainer to the stewards, and the horse has been approved for racing by the commission veterinarian prior to being entered for a race.

(4) If a horse races in violation of this administrative regulation and participates in the purse distribution, then a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this administrative regulation and is claimed, then a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours requesting the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant

(6) A list of all denerved horses shall be posted in the racing secretary's office. A person shall not report a horse as having a neurectomy if in fact the horse has not had a neurectomy.

Section 4. Bleeders. (1) A horse that bleeds either during or after a race or workout and is not on bleeder medication may race on bleeder medication at the discretion of the commission veterinarian.

(2)(a) A horse that bleeds while on bleeder medication shall be placed on the veterinarian's list and shall remain on the list until removed by the commission[~~authority~~] veterinarian after consultation with the practicing veterinarian.

(b) If the commission veterinarian and the practicing veterinarian disagree on the removal of the horse from the veterinarian's list, then a third veterinarian shall be appointed by the chairman of the commission or his designee.

(c) The opinion of the third veterinarian shall be delivered to the secretary of the commission or his designee who shall make a final decision on the issue.

Section 5 Health Certificate Required. A horse shall not be stabled on association grounds unless within ten (10) days prior to arrival on association grounds, the horse has been examined by an accredited practicing veterinarian who shall certify:

(1) The identity of the horse;

(2) Temperature when examined;

(3) That to the best of his or her knowledge and belief, the horse is free from any infectious or contagious disease or exposure thereto and observable ectoparasites; and

(4) Any other matters as may be required from time to time by the Kentucky State Veterinarian. Notice of this requirement shall accompany stall applications and be included in the condition book.

Section 6. Workouts. A horse shall not be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 7. Age Restrictions. A maiden six (6) years of age or older which has made five (5) life time starts on the flat shall not be entered or start.

Section 8. Fillies and Mares Bred. (1) Any filly or mare that has been covered by a stallion shall be so reported to the racing secretary prior to being entered in a race.

(2) A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office.

(3) A filly or mare that has been covered by a stallion shall be entered in a claiming race, unless a written release from the stallion owner is attached to the filly or mare's registration certificate indicating that the stallion service fee has been paid or satisfied.

Section 9 Serviceable for Racing A horse shall not be entered or raced that.

(1) Is not in serviceable, sound racing condition. The stewards may at any time cause a horse on association grounds to be examined by a qualified person;

(2) Is posted on a veterinarian's list, stewards' list, or starter's list, or is suspended, in any racing jurisdiction,

(3) Has been administered any drug in violation of 810 KAR 1:018;

(4) Is blind or has seriously impaired vision;

(5) Is not correctly identified to the satisfaction of the stewards; or

(6) Is owned wholly or in part by, or is trained by, an ineligible person.

Section 10. Equipment. (1) Riding crops[~~Whips~~] and blinkers shall be used consistently on a horse.

(2) Permission to change use of any equipment used on a horse in its last previous start shall be obtained from the stewards.

(3) A horse's tongue may be tied down during a race with a clean bandage or gauze.

(4) A horse's bridle may weigh no more than two (2) pounds.

(5) Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather.

(6) War bridles shall not be used.

(7) A horse shall not race in ordinary training shoes.

(8) Bar shoes may be used for racing only with permission of the stewards.

(9) Any goading device, chain, spurs, electrical or mechanical

device, or appliance, except for **a riding crop**[~~an ordinary whip~~], which may be used to alter the speed of a horse shall not be used on a horse in a race or workout.

(10)(a) **All riding crops may be**[are] subject to inspection and approval by the stewards **or**[and] the clerk of the scales **to ensure conformity with the specifications of paragraphs (c) through (e) of this subsection**

(b) Only riding crops meeting the specifications of this subsection, including the mandatory shock absorbing characteristics, may be used in thoroughbred racing including training.

(c) A riding crop shall have a:

1. Maximum weight of eight (8) ounces;

2. Maximum length, including flap, of thirty (30) inches; and

3. Minimum diameter of the shaft of one-half (1/2) inch.

(d) The only additional feature that may be attached to the riding crop is a flap.

1. A flap shall have a:

a. Maximum length from the end of the shaft of one-half (1/2) inch; and

b. Maximum width of one and six-tenths (1.6) inches, with a minimum width of eight-tenths (0.8) inch;

2. The flap from the end of the shaft shall not contain any reinforcements or additions;

3. There shall not be binding within seven (7) inches of the end of the flap;

4. The contact area of the shaft shall be smooth, with no protrusion or raised surface, and covered by shock absorbing material throughout its circumference; and

5. The flap shall have a similar shock absorbing characteristics to that of the contact area.

(e) A riding crop shall not have:

1. Stingers or projections extending through the hole of a popper; and

2. Any metal parts.[~~set out below, including the mandatory shock absorbing characteristics, shall be allowed in thoroughbred racing including training.~~

~~1. Maximum weight of eight (8) oz.~~

~~2. Maximum length, including flap, of thirty (30) inches.~~

~~3. Minimum diameter of the shaft of one-half (1/2) inch.~~

~~(c) The only additional feature that may be attached to the riding crop is a flap, which shall fall within the specifications below:~~

~~1. A maximum length of flap from the end of the shaft of one-half (1/2) inch;~~

~~2. A maximum width of the flap of one and six-tenths (1.6) inches, with a minimum width of eight tenths (0.8) inch.~~

~~3. The flap from the end of the shaft must not contain any reinforcements of additions;~~

~~4. There shall be no binding within seven (7) inches of the end of the flap;~~

~~5. The contact area of the shaft must be smooth, with no protrusion or raised surface, and covered by shock absorbing material throughout its circumference;~~

~~6. The flap must have similar shock absorbing characteristics to that of the contact area.~~

~~(d) No stingers or projections extending through the hole of a popper or any metal part on a whip shall be permitted~~] [~~A whip shall not be used that weighs more than one (1) pound or is longer than thirty (30) inches with one (1) popper.~~

~~(b) A stinger or projection extending through the hole of a popper or any metal part on a whip shall not be used.~~

~~(c) An ordinary whip shall not be used indiscriminately or brutally, as determined by the stewards.~~]

(11)(a) The following shall not be used on the front shoes of thoroughbred horses while racing or training on all racing surfaces:

1. Horse shoes (racing plates) which have toe grabs;

2. Bends;

3. Jar calks;

4. Stickers; and

5. Any other traction device worn on the front shoes of thoroughbred horses.

(b) Wear plates with a height no greater than two (2) millimeters may be used on the front shoes of thoroughbred horses while racing or training.

Section 11. Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary promptly. The racing secretary shall note any alteration in the sex of a horse on the horse's registration certificate.

Section 12. Postmortem Examination. Each horse which suffers a breakdown on the race track, in training, or in competition, and is destroyed, and each horse which expires while stabled on a race track under jurisdiction of the Racing Commission, shall undergo a postmortem examination at the University of Kentucky at the discretion of the commission steward and the commission veterinarian.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: February 12, 2009

FILED WITH LRC: February 13, 2009 at 11 a.m.

CONTACT PERSON John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Breeders' Incentives
(As Amended at ARRS, April 14, 2009)

810 KAR 1:016. Running of the race.

RELATES TO: KRS 230.215(2), 230.260(3)[~~230.210-230.360~~]

STATUTORY AUTHORITY: KRS 230.260(3), **EO 2008-668**[~~Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) grants the Kentucky Horse Racing Authority the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in Kentucky. EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the Commission. This administrative regulation sets forth the standards and requirements governing the running of a horse race.[~~To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation outlines the requirements relating to the running of a race.~~]

Section 1. Post Time. Post time for the first race on each racing day shall be approved by the commission[~~authority~~]. Post time for subsequent races on the same program shall be fixed by the pari-mutuels manager. At tracks where night racing is conducted, a[~~no~~] race shall not be started after 11:55 p.m.

Section 2. Horses in Paddock Not to be Touched. A[~~No~~] person shall not touch a horse while in the paddock except for its licensed owner, its licensed trainer, authorized stable personnel, the paddock judge, the horse identifier, its assigned valet, a steward, a farrier, or an outrider.

Section 3. Trainer Responsibility. The trainer shall be responsible for arrival in the paddock, at the time prescribed by the paddock judge, of each horse entered by the trainer and shall supervise the saddling of the horse. If a trainer is to be absent from a track where his horses are participating in races, he shall provide his own assistant trainer or licensed trainer to substitute for him during his absence.

Section 4. Withdrawal of a Horse. A[~~Every~~] horse whose starting is obligatory shall run the course,[~~;~~] except that[~~,~~] the stewards may order the withdrawal of a horse at any time up to the actual start of a race.

Section 5. Walkover. If at the time for saddling, only one (1) horse or horses owned by only one (1) stable **will**[~~shall~~] be weighed out, the horse or horses of single ownership shall be rid-

den past the stewards' stand, go to the post and then move over the course before determination of the winner.

Section 6. Parade to the Post; Time. All horses shall parade and carry their declared weight from the paddock to the starting post[,] The parade shall pass the stewards' stand. After passing the stewards' stand once, horses may break formation and canter, warm up, or go as they please to the post. The parade to the post shall not exceed twelve (12) minutes from the time the field enters upon the track, except in cases of unavoidable delay. If a jockey is thrown on the way to the post, the jockey shall remount at the point at which thrown. If the jockey is so injured as to require a substitute jockey to be named for the horse by the stewards, the horse shall be returned to the paddock where the horse shall be remounted by a substitute jockey.

Section 7. Lead Pony. **If**[When], by permission of the paddock judge, a horse is led to the post by a pony, the horse may be excused from parading with the other horses. The horse shall en route to the post, pass the stewards' stand. Lead ponies may be excluded from the saddling enclosure or walking ring, at the discretion of the stewards and paddock judge.

Section 8. Control of Horses and Jockeys by Starter. The horses and jockeys shall be under the control of the starter from the moment they enter the track until the race is started. If an injury occurs to any jockey or his equipment malfunctions, the starter may grant a delay to permit the substitution of a jockey or repair of equipment. During the delay, the starter may permit any jockey to dismount. If a horse breaks through the gate or unseats its jockey after any of the field is loaded in the starting gate, and the horse is not immediately taken in hand by the outrider and brought back for reloading, the starter shall unload the horses in the gate The starter shall reload the horses in their proper order when the runaway horse is brought back to position for reloading. All causes of delay shall be reported by the starter to the stewards. **A**[No] person other than the jockey, starter, or assistant starter shall **not** [be permitted to] strike a horse or attempt, by shouting or other means [fashion], to assist the horse in getting a start.

Section 9. Starting Gate to be Used. A starting gate approved by the authority shall be used in starting all races on the flat except **If**[in cases] permitted by the stewards. If a race is started without a starting gate, there shall **not be a start until, and not be a**[be no start until, and no] recall after, the assistant starter has dropped his flag in answer to the starter.

Section 10. Horses Left at Post. (1) If a door at the front of the starting gate fails to open properly and timely when the starter dispatches the field, or if a horse inadvertently has not been loaded in his scheduled position in the starting gate when the field is dispatched, thereby causing the horse to be left at the post, the starter shall immediately report the circumstance to the stewards who shall immediately post the "inquiry" sign on the infield results board and advise the public to hold all mutuel tickets. After consulting with the starter and viewing the patrol films or video tapes, the stewards then shall determine whether the horse was precluded from obtaining a fair start.

(2) If the stewards find the horse was precluded from obtaining a fair start, the stewards shall rule the horse a nonstarter and shall order money wagered on the horse deducted from the pari-mutuel pool and refunded to holders of pari-mutuel tickets **on the horse**[thereon], unless[, except if] the horse ruled a nonstarter is part of a mutuel entry and another horse in the entry is not left at the post, in which case there shall **not be a**[be no] pari-mutuel refund.

(3) Stakes fees for the ruled nonstarter shall be refunded to the owner.

(4) The starter may, in his discretion, place an unruly or fractious horse on the outside of the starting gate and one (1) length behind the starting line. If the horse so stationed outside the starting gate by the starter dwells or refuses to break with the field and is thereby left at the post, there shall **not be a**[be no] refund of pari-mutuel wagers on the horse[thereon] nor refund of stakes fees paid for the horse[therefor].

Section 11. Horses Failing to Finish. Any horse which starts in a race[,] but does not cross the finish line, or which is not ridden across the finish line by the jockey with whom it starts the race, shall be declared unplaced. Any portion of the purse that **would**[may] normally accrue to the horse shall revert to the association.

Section 12. Fouls. A leading horse **If**[when] clear is entitled to any part of the track. If a leading horse or any other horse in a race[,] swerves or is ridden to either side so as to interfere with, intimidate, or impede any other horse or jockey, or to cause the same result, this action[such] shall be deemed a foul. If a jockey strikes another horse or jockey, it is a foul. If in the opinion of the stewards[,] a foul alters the finish of a race, **an offending horse**[any offending horses] may be disqualified by the stewards.

Section 13. Stewards to Determine Foul Riding. **A**[Every] jockey shall **make**[be responsible for making] his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged. If in the opinion of the stewards[,] a foul is committed as a result of a jockey not making his best effort to control and guide his mount to avoid a foul, whether intentionally or through carelessness or incompetence, the jockey may be penalized at the discretion of the stewards.

Section 14. Horses to be Ridden Out Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time. **A**[No] horse shall not be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money. A jockey who unnecessarily causes a horse to shorten stride may be penalized at the discretion of the stewards. Stewards shall take cognizance of any marked reversal of form of a horse[all horses] and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse [suspected of unformful racing]. If the stewards find that the horse was deliberately restrained or impeded in any way or by any means so as not to win or finish as near as possible to first, any person found to have contributed to **that**[such] circumstance may be penalized at the discretion of the stewards.

Section 15. Use of Riding Crops (1) Although the use of a riding crop is not required, a jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his or her best efforts to win.

(2) In any race in which a jockey will ride without a riding crop, an announcement of that fact shall be made over the public address system

(3) An electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than a riding crop approved by the stewards, **pursuant to 810 KAR 1:012** shall not be possessed by anyone, or applied by anyone to a horse at any time, on the grounds of the association during a race meeting, whether during a race or otherwise

(4) A riding crop shall not be used on a two (2) year-old horse in races before April 1 of each year

(5) A riding crop shall only be used for safety, correction and encouragement.

(6) A rider who uses a riding crop shall:

(a) Show the horse the riding crop and give the horse time to respond before striking the horse;

(b) Having used the riding crop, give the horse a chance to respond before using it again; **and**

(c) Use the riding crop in rhythm with the horse's stride

(7) A riding crop shall not be used to strike[Prohibited use of the riding crop includes striking] a horse:

(a) On the head, flanks or on any other part of its body other than the shoulders or hind quarters except **If**[when] necessary to control a horse;

(b) During the post parade or after the finish of the race except **If**[when] necessary to control the horse.

(c) Excessively or brutally;

(d) Causing welts or breaks in the skin;

(e) **If**[When] the horse is clearly out of the race or has obtained its maximum placing; **and**

(f) Persistently even though the horse is showing no response under the riding crop.[, or.]

(8) A riding crop shall not be used to strike[(a)] another person

(9)[(8)] After the race, a horse **may**[shall] be subject to inspection by a racing **official** or official veterinarian looking for cuts, welts or bruises in the skin. Any adverse findings shall be reported to the stewards.

(10)[(9)] The giving of instructions by any licensee that if obeyed would lead to a violation of this **section**[rule] may result in disciplinary action also being taken against the licensee who gave **the**[such] instructions [Whips. (1) If a jockey will not ride with a whip in a race, an announcement shall be made over the public address system of the fact.

(2) The use of a whip shall not be required. A jockey who uses a whip during a race shall be prohibited from whipping a horse:

(a) On the head, flanks, or on any part of its body other than the shoulders or hind quarters;

(b) During the post parade except when necessary to control the horse;

(c) Excessively or brutally causing welts or breaks in the skin;

(d) When the horse is clearly out of the race or has obtained its maximum placing; or

(e) Persistently even though the horse is showing no response under the whip.

(3) Correct uses of the whip shall be:

(a) Showing horses the whip before hitting them;

(b) Using the whip in rhythm with the horse's stride; and

(c) Using the whip as an aid to keep a horse running straight.]

Section 16. Other Means of Altering Performance. An electrical or mechanical appliance[No appliance, electrical or mechanical], other than [the] **a riding crop**[an ordinary whip], shall not be used to affect the speed of a horse in a race or workout. A[No] sponge or other object **shall**[may] not be used to interfere with the respiratory system of a horse. Use or nonuse of ordinary racing equipment shall be consistent and any change of equipment[thereof] shall be approved by the stewards.

Section 17. Official Order of Finish as to Pari-mutuel Payoff. When satisfied that the order of finish is correct and that the race has been properly run in accordance with the rules and administrative regulations of the commission[authority], the stewards shall order that the official order of finish be confirmed and the official sign posted for the race. The decision of the stewards as to the official order of finish for pari-mutuel wagering purposes is final and no subsequent action shall set aside or alter the[such] official order of finish for the purposes of pari-mutuel wagering.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: February 12, 2009

FILED WITH LRC: February 13, 2009 at 11 a.m.

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PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
Division of Breeders' Incentives
(As Amended at ARRS, April 14, 2009)

811 KAR 1:215. Kentucky Standardbred Development Fund.

RELATES TO: KRS 230.215, 230.260, 230.770, 230.802, 230.990, EO 2008-668

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(3), 230.770(1), (5), (6), EO 2008-668

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(3) authorize the Authority to promulgate administrative regulations prescribing the conditions under which horse racing shall be conducted in Kentucky. KRS 230.770(1) establishes the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund. KRS 230.770(5) and (6) authorize the Authority to promulgate administrative regulations establishing the eligibility of horses participating in races for which a portion of the purse is provided by the Kentucky Standardbred Development Fund and the conditions, class, and quality of the races. EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the Commission. This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, mandatory criteria for races, and the administration of purses and payments in these races.

Section 1. Definitions. (1) "Final" means the race following a series of preliminary legs established to determine the divisional champion of each racing division of the Sires Stakes Program.

(2) "Kentucky Sires Stakes" means the series of races held annually in Kentucky for two (2) and three (3) year-old fillies and colts, both trotting and pacing, sired by standardbred stallions standing within Kentucky at the time of conception and funded by the Kentucky Standardbred Development Fund.

(3) "Kentucky Standardbred Development Fund" means the trust and revolving fund as set out in KRS 230.770.

(4) "KSDF" means the Kentucky Standardbred Development Fund.

Section 2. (1)[(a)] An owner, lessee, stallion manager, or syndicate manager of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Kentucky Standardbred Development Fund shall register the stallion by July 1 of the breeding season with the Kentucky Horse Racing Commission[Authority].

(2) A standardbred stallion that has never sired a foal shall be registered in any breeding season prior to his first breeding.

(3) A stallion shall be registered on the Standardbred Stallion Certificate, KHRA 300-2 (8/06).

(4) A stallion that satisfies the provisions of this section shall be considered a registered stallion for purposes of this administrative regulation.

Section 3. Initial Registration Fees. (1) The following initial registration fees shall be paid:

(a) The sire registration fee for a stallion with an annual book of twenty-five (25) or more mares shall be one (1) full advertised stud fee.

(b) The sire registration fee for a stallion with an annual book of twenty-four (24) mares or less shall be twenty (20) percent of the advertised stud fee or a minimum of $200; and

(c) The registration fee for a stallion standing at Private Treaty shall be the average stud fee charged for all cash breeding agreements for the breeding season.

(2) The annual stallion registration fee shall follow the gait of the stallion.

(3) Stallion fees shall be due on or before October 1 of the year nominated to the KSDF.

(4) If a stallion was nominated to the KSDF, the stallion fee shall be paid on or before the October 1 deadline regardless of whether mares are bred to the nominated stallion.

(5) At the end of a breeding season, the owner or lessee of a stallion standing at Private Treaty shall submit to the Commission[Authority] a list of mares bred and prices charged.

Section 4. Registration Renewal Fees. (1) The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.

(2) The "Standardbred Stallion Certification of Eligibility Renewal", (12/06) form shall be filed by July 1 of the breeding season.

(3) The annual renewal fee for registration of stallions to the Kentucky Standardbred Development Fund shall be:

(a) One (1) full advertised stud fee for a stallion with an annual book of twenty-five (25) or more mares; and

(b) Twenty (20) percent of the stud fee or a minimum of $200 for a stallion with an annual book of twenty-four (24) or less mares.

(4) The annual stallion renewal fee shall follow the gait of the stallion.

(5) Stallion fees shall be due on or before October 1 of the year the renewal form is filed.

(6) If a stallion was nominated to the KSDF, the renewal fee shall be paid on or before the October 1 deadline regardless of whether mares were bred to the nominated stallion.

Section 5. An owner, lessee, stallion manager or syndicate manager of a standardbred stallion registered with the Commission[~~Authority~~] shall, by October 1 of each calendar year, submit the stallion registration fee, as set forth in Sections 3 and 4 of this administrative regulation, and a report of each stallion, listing the mares bred by each stallion during the preceding twelve (12) months.

Section 6. (1) In order to qualify for the Kentucky Sires Stakes, a foal shall be the product of the mating of a mare with a Kentucky registered and resident stallion.

(2)(a) Foals, other than the first born to a mare (donor or recipient) in each calendar year produced by any method, including embryo/ovum transplant (ET), shall not be eligible for harness racing in Kentucky.

(b) This rule shall not apply to natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare.

(3) Any future offspring of foals ineligible for racing under this section shall not be eligible for harness racing in Kentucky.

Section 7. (1) If the Commission[~~Authority~~] determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion contains false or misleading information, or that an owner, lessee, stallion manager, or syndicate manager of a registered stallion fails to furnish information the Commission[~~Authority~~] has requested relating to the registration or renewal of a stallion, the Commission[~~Authority~~] shall:

(a) Temporarily suspend or deny the registration of the stallion; and

(b) Summon the person who committed a violation listed in this subsection, and any person who has knowledge relating to the violation, to appear before the Commission[~~Authority~~] at a hearing pursuant to 811 KAR 1:105.

(2) After the hearing, the Commission[~~Authority~~] shall determine whether the violation was willful.

(a) If the Commission[~~Authority~~] finds the violation was willful, the Commission[~~Authority~~] shall do one (1) or more of the following, based on the degree of seriousness of the willful violation:

1. Officially deny the registration;
2. Officially suspend the registration;
3. Officially revoke the registration; or
4. Bar the owner, lessee, stallion manager, or syndicate manager who willfully committed the violation from further registering stallions to the KSDF.

(b) If the Commission[~~Authority~~] finds the violation was not willful, the Commission[~~Authority~~] shall rescind the temporary suspension or denial of the registration.

(3) If a person summoned by the Commission[~~Authority~~] fails to respond to the summons, the Commission[~~Authority~~]:

(a) Shall suspend or deny the registration of the stallion;

(b) Shall notify the person in writing of the action taken by the Authority; and

(c) May bar the owner, lessee, stallion manager or syndicate manager who committed the violation from further registering stallions to the KSDF Program, based on the degree of seriousness of the violation.

Section 8. An owner, lessee, stallion manager or syndicate manager of a stallion eligible for the Kentucky Standardbred Development Fund shall be responsible for.

(1) The registrations and records of the farm; and

(2) Complying with the requirements of the Kentucky Standardbred Development Fund.

Section 9. (1) An owner, lessee, stallion manager or syndicate manager of a stallion used for breeding purposes to produce horses eligible for racing in Kentucky may only issue one (1) mating certificate required to register the first born foal produced by a mare in each calendar year, except for natural birth twins produced from the same pregnancy and foaling by the natural, nonrecipient mare.

(2) If it has been determined that an owner, lessee, stallion manager or syndicate manager of the stallion has issued a mating certificate for a foal other than the first born to a mare (donor or recipient), all foals produced by the mare (donor or recipient) in the applicable calendar year shall be ineligible for racing in Kentucky.

Section 10. The Standardbred Authorized Agent Form, KHRA 300-3 shall be filed with the stallion registration.

Section 11. Kentucky Sires Stakes races in which any part of the purse is provided by the Kentucky Standardbred Development Fund, the requirements for which are established in Sections 12 through 33 of this administrative regulation, shall be subject to the provisions of 811 KAR Chapter 1.

Section 12. A participant in the Kentucky Sires Stakes race shall:

(1) Be the product of the mating of a mare with a Kentucky registered and resident stallion; and

(2) Maintain eligibility for the Kentucky Standardbred Development Fund.

Section 13. Each race shall be a one (1) mile dash.

Section 14. Post positions for the final and all preliminary legs shall be an open draw with two (2) "also eligibles" drawn for the final race.

Section 15. Eligibility for the Final. (1) A horse that does not start in at least one (1) of the preliminary legs scheduled shall not be eligible for the final.

(2) A horse that enters a preliminary leg that does not fill and is not raced shall receive credit toward fulfilling the minimum starting requirements set forth in subsection (1) of this section and toward determining tiebreaker status as set forth in subsection (5)(b) of this section.

(3) A horse that has been scratched from an event that is raced shall not receive credit toward meeting the starting requirements set forth in subsection (1) of this section.

(4) A horse, in order to start in the final, shall be declared at the host track where the race is being held on or before the time posted on the track condition sheet.

(5)(a) If the number of horses eligible and declared into any final event exceeds the maximum number specified by the Kentucky Standardbred Development Fund or the number of positions on the starting gate, the following point system as applied to KSDF preliminary legs shall determine preference for the final:

1. 1st place - fifty (50) points;
2. 2nd place - twenty-five (25) points;
3. 3rd place - twelve (12) points;
4. 4th place - eight (8) points;
5. 5th place - five (5) points;
6. 6th place and all other starters - one (1) point; and
7. A horse finishing in a dead heat for any position in a preliminary leg shall be awarded an equal share of the total number of points awarded for that position.

(b) If there is a tie among horses after the awarding of points pursuant to subsection (5) of this section, there shall be a drawing by lot among those horses tied in total points to determine which horses shall be included in the final field.

(c) If a horse that is qualified for the final is not declared, the horse with the next highest point total, pursuant to subsection (5) of this section, that is declared shall be eligible for the final.

(6) Also eligibles.

(a) The two (2) horses accumulating the highest point total, pursuant to subsection (5) of this section, that are declared into the final, but do not qualify for the final, shall be designated "also eligible". The horse with the highest point total from the preliminary legs shall be designated as the "first also eligible" and the horse with the next highest point total shall be designated as the "second also eligible".

(b) A horse that is scratched in the final shall be replaced by the "first also eligible" and then the "second also eligible", if necessary.

1. If post positions have not been drawn at the time of the scratch, the "also eligible" shall take the place of the horse that has been scratched and shall participate in the normal draw.

2. If post positions have been drawn at the time of the scratch, the "also eligible" shall assume the post position of the horse that has been scratched.

3. A horse shall not be moved into the final as a replacement after the official scratch time deadline that is in effect at the host track.

Section 16. The judges' "official order of finish" shall be used in determining eligibility to the final exclusive of all appeals yet to be decided at the time of closing of the entry box for final events.

Section 17. All starters shall be subject to the detention policy of the racetrack.

Section 18. (1) There shall not be more than:

(a) Ten (10) starters in each final race on a mile track; and

(b) Eight (8) horses on a one-half (1/2) or five-eighths (5/8) mile track.

(2) All horses shall be on the gate for the final race.

Section 19. (1) For each horse declared to race in a preliminary leg, there shall be a declaration fee of $500[~~$1,000~~]. If a preliminary leg splits into two or more divisions, the declaration fee shall be $500 per division. For each horse declared to race in the final, there shall be a declaration fee of one (1) percent of the total purse[~~$2,000~~].

(2) The declaration fee shall be due to the racing association at the time of declaration and payable one (1) hour prior to post time of the race.

(3) Purses for the Kentucky Standardbred Development Fund shall consist of money from:

(a) Nominating fees;

(b) Sustaining fees;

(c) Stallion fees;

(d) Declaration fees; and

(e) Added money from the Commonwealth of Kentucky.

(4)(a) Distribution of revenue for Kentucky Sires Stakes races shall be reviewed and addressed annually, not later than December 15[~~August 15~~] of each calendar year, by an advisory panel consisting of at least one (1) representative from each of the following:

1. The Kentucky Horse Racing Commission[~~Authority~~];

2. The Kentucky Harness Horseman's Association;

3. The host racetrack;

4. The Kentucky Standardbred Breeders Association and any other recognized standardbred breeding association organized in Kentucky; and

5. The owner of a stallion registered to the Kentucky Standardbred Development Fund.

(b) The final determination regarding distribution of revenue shall be made by the Kentucky Horse Racing Commission[~~Authority~~].

Section 20. (1) The total number of horses entered shall determine the number of divisions of the preliminary legs that shall be required.

(2) Preliminary legs shall be split into divisions as follows:

(a) One (1) mile track:

1. Twelve (12) horses or less entered - one (1) division race.

2. Thirteen (13) to twenty (20) horses entered - two (2) divisions.

3. Twenty-one (21) to thirty (30) horses entered - three (3) divisions.

4. Thirty-one (31) to forty (40) horses entered - four (4) divisions.

5. Forty-one (41) to fifty (50) horses entered - five (5) divisions.

6. Fifty-one (51) to sixty (60) horses entered - six (6) divisions.

7. If the need exists for seven (7) or more divisions eliminations, eligibility to the final shall be determined in a manner consistent with the published conditions.

(b) One-half (1/2) and five-eighths (5/8) mile track:

1. Nine (9) to ten (10) horses entered - one (1) division.

2. Eleven (11) to sixteen (16) horses entered - two (2) divisions.

3. Seventeen (17) to twenty-four (24) horses entered - three (3) divisions.

4. Twenty-five (25) to thirty-two (32) horses entered - four (4) divisions.

5. Thirty-three (33) to forty (40) horses entered - five (5) divisions.

6. Forty-one (41) to forty-eight (48) horses entered - six (6) divisions.

7. If the need exists for seven (7) or more divisions, eligibility to the final shall be determined in a manner consistent with the published conditions.

Section 21. (1) Gait shall be specified by the owner of the horse, by the first two (2) year old payment.

(2) Change of gait:

(a) May be made at the time of declaration at the track; and

(b) Sustaining payments shall remain in the funds of the original gait specified.

(3) A horse shall not race on both gaits in the same year.

Section 22. A race shall be raced in separate divisions as follows:

(1) Colt/gelding/ridgeling divisions; and

(2) Filly divisions.

Section 23. (1) The purses awarded for all races shall be distributed on the following percentage basis:

(a) 50-25-12-8-5: five (5) starters or more;

(b) 50-25-15-10: four (4) starters;

(c) 60-30-10: three (3) starters;

(d) 65-35; two (2) starters; and

(e) 100: one (1) starter.

(2) The percentage basis established by subsection (1) of this section shall apply at each of the Kentucky pari-mutuel tracks.

Section 24. (1) If circumstances prevent the racing of an event, and the race is not drawn, all funds that have been allocated to the division in each of the preliminary legs or the final shall be refunded and pro-rated to the owners of the horses eligible at the time of cancellation.

(2) The eligible horses shall include only horses that made the payments required by Section 30 of this administrative regulation

(3) The added monies provided by the Commonwealth of Kentucky for use in the Kentucky Standardbred Development Fund shall be disbursed by December[~~August~~] 15 of each calendar year in accordance with the formula created by the panel as set out in Section 19(4) of this administrative regulation.

Section 25. Starters shall declare in at each track on or before the time specified and advertised by the association conducting the event.

Section 26. (1) Any horse declared into Kentucky Sires Stakes races shall:

(a) Show at least one (1) charted race line with no breaks within thirty (30) days prior to the day of the race; and

(b) Have satisfied the following time requirements:

1. On a track larger than five-eighths (5/8) of a mile:

a A two (2) year old trotter shall have been timed in 2 08 or faster;

b A two (2) year old pacer shall have been timed in 2:06 or

faster;

c A three (3) year old trotter shall have been timed in 2.04 or faster; and

d A three (3) year old pacer shall have been timed in 2:02 or faster.

2. On a five-eighths (5/8) mile track:

a. A two (2) year-old trotter shall have been timed in 2:09 or faster;

b. A two (2) year-old pacer shall have been timed in 2:07 or faster;

c. A three (3) year-old trotter shall have been timed in 2:05 or faster; and

d. A three (3) year-old pacer shall have been timed in 2:03 or faster.

3. On a one-half (1/2) mile track:

a. A two (2) year-old trotter shall have been timed in 2:10 or faster;

b. A two (2) year-old pacer shall have been timed in 2:08 or faster;

c. A three (3) year-old trotter shall have been timed in 2:06 or faster; and

d. A three (3) year-old pacer shall have been timed in 2:04 or faster.

(2) A horse shall be scratched from a race if the person declaring the horse has failed to advise the race secretary of a start that is not reflected on the electronic eligibilities.

(3) The requirements of this section shall apply both to wagering and nonwagering races.

Section 27. (1) At a scheduled meeting of the Commission[~~Authority~~], the Commission[~~Authority~~]:

(a) Shall establish the distribution of funds for stakes races for the upcoming year; and

(b) Shall authorize expenditures at a time it designates.

(2) The racing dates for KSDF stakes shall be issued after the track has established its race dates.

Section 28. The Kentucky Standardbred Development Fund shall provide a trophy for each event which will be paid out of KSDF funds.

Section 29. (1) After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year. The Kentucky Sire Stakes Nomination Form, KHRA 300-1 shall be filed with the Commission[~~Authority~~] along with the nomination and sustaining fees.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible to the KSDF as a three (3) year old.

Section 30. Nomination and sustaining payments shall be made to the Kentucky Standardbred Development Fund in U.S. funds.

Section 31. (1) Yearlings shall be nominated by May 15 of their yearling year, except as provided in subsection (4) of this section.

(2) The nomination fee shall be forty (40) dollars per yearling.

(3) A nomination shall be accompanied by a photocopy of the United States Trotting Association or Standardbred Canada registration certificate.

(4) If a horse is not nominated during its yearling year, the horse may be nominated prior to March 15 of its two (2) year old year if:

(a) A supplemental payment of $500 is made by March 15 of the two (2) year old year; and

(b) The two (2) year old payment due by March 15, as provided in subsection (5)(a) of this section, is also made.

(5) Sustaining payments shall be as follows:

(a) TWO (2) YEAR OLD PAYMENTS	
March 15	$300
April 15	$300
May 15	$300
March 15 payment shall be mandatory to make entry eligible as a three (3) year old.	

(b) THREE (3) YEAR OLD PAYMENTS	
February 15	$300
March 15	$300
April 15	$300

Section 32. The Commission[~~Authority~~], during any given year, may provide for separate early closing events for both two (2) and three (3) year old standardbreds that are Kentucky sired.

Section 33. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Sire Stakes Nomination Form KHRA 300-1", (8/06);

(b) "Standardbred Stallion Certificate, KHRA 300-2", (8/06);

(c) "Standardbred Authorization Agent Form, KHRA 300-3", (8/06)"; and

(d) "Standardbred Stallion Certification of Eligibility Renewal 300-4", (12/06).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission[~~Authority~~], 4063 Iron Works Pike, Building B, Lexington Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may be obtained from the KHRA Web site at www.khrs.ky.gov.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: February 13, 2009

FILED WITH LRC: February 13, 2009 at 11 a.m.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, April 14, 2008)

902 KAR 20:106. Operation and services; ambulatory surgical center.

RELATES TO: KRS 211.842-211.852, 216B.040, 216B.042, 216B.105(2), (3)[~~216B.010-216B.130~~], 216B.990(1), (2), 311.400, 311710-311.810, 313.040, 313.420, 314 041, 314.042, 314.051 [~~311.380-311.500, 311.530-311.620, 311.710-311.810, 313 010-313 258, 313.400-313 470, 314.011-314.110, 314.193, 314 195~~], 333 030

STATUTORY AUTHORITY: KRS 216B.040, [~~216B.105(2), (3),~~] 216B.042(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042(1)(a) and (c) require the cabinet to promulgate administrative regulations necessary for the proper administration of the licensure function and to establish licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes the licensure requirements for the operation and services of ambulatory surgical centers.

Section 1. Definitions. (1) "Admission" means the time[~~shall be deemed to have occurred~~] after completion of the registration process and at the first instance of rendering medical care to the patient on the day of the scheduled procedure as a part, or in anticipation, of a surgery.

(2) "Ambulatory surgical center" means a public or private institution that is:

(a) Hospital based or freestanding;

(b) Operated under the supervision of an organized medical staff; and

(c) Established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(3)[~~(2)~~] "Cabinet" is defined by KRS 216B.015(5).

(4)[(3)] "Center" means an ambulatory surgical center.

(5)[(4)] "Licensee" means a person or business entity that has been issued and holds a valid ambulatory surgical center license from the Cabinet for Health and Family Services.

Section 2. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for operation of the center and for compliance with federal, state, and local laws and regulations pertaining to operation of the center.[.]

(b) The licensee shall develop written policies for the administration and operation of the center. Medical staff shall approve medical policies. Policies shall include.[:]

1. Personnel practices and procedures. These shall be available to personnel;

2. Job descriptions for each level of personnel including the authority, responsibilities, and actual work to be performed in each classification;

3. Written infection control measures. Written procedures shall govern the use of aseptic techniques and procedures in all areas of the center;

4. Sterilization of supplies;

5. Disposal of patient waste and other potentially infectious materials;

6. Examination by a pathologist of tissues removed during surgery. Policies shall identify tissues which require examination and which do not;

7. Instances in which consultations with other physicians, dentists, or podiatrists shall be required;

8. A list of surgical procedures which may be performed in the center;

9. Granting and withdrawal of medical staff surgical privileges and privileges for the administration of anesthetics; and

10. Arrangement for transportation of patients who require hospital care.

(2) Personnel.

(a) Administrator. The center shall have an administrator responsible for the day to day operation of the center and for delegating that responsibility in the administrator's[his] absence.

(b) Current employee records shall be maintained and shall include:

1. A resume of the employee's training and experience;

2. Evidence of current licensure or registration if required; and

3. Reports of accidents occurring while the employee is on duty.

(c) Medical staff requirements. The center shall have an organized medical staff responsible for the quality of medical care provided in the center and for the ethical and professional practices of its members.

1. The medical staff shall develop the center's medical care policies.

2. Surgical procedures shall be performed by physicians, dentists, or podiatrists who are legally authorized to perform them and have been granted privileges to perform the procedures by the center through its medical staff or governing body.

(d) Pharmaceutical, radiology or[and] laboratory services provided directly by the center or through an agreement with another entity shall be provided under the direction of a licensed pharmacist, a physician specializing as a radiologist, or[and] a physician specializing as a pathologist, respectively, on a full-time, part-time or regular consultative basis.

(e) The center shall employ registered nurses on a full-time basis for patient care in the operating and postanesthesia recovery rooms[room].

(f) The center shall employ other nursing personnel, aides and technicians as required to meet the needs of the patients served by the center including personnel to be responsible for supervision, indexing, and filing of medical records.

(3) A center shall not retain a patient longer than twenty-four (24) hours from the time of admission to discharge. [The center shall not provide accommodations for overnight stay.]

(4) The center shall not have provisions for obstetrical deliveries.

(5) Physician coverage A physician or the practitioner that performs the surgery shall be present in the center until all patients have been discharged and have left the center.

(6) The center shall have a physician on the medical staff with admitting privileges in a nearby hospital who is responsible for admitting patients in need of inpatient care.

(7) Medical records.

(a) Content. Adequate and complete medical records shall be prepared for all patients admitted to the surgical center. Notes shall be legibly written or typed and signed. A medical record shall include the following information:

1. Name and address of person the or agency responsible for the patient;

2. Patient identification data, including the patient's:

a. Name;

b. Address;

c. Age;

d. Sex; and

e. Marital status;

3. Date of admission and discharge;

4. Referring and attending physicians', dentists' and podiatrists' names;

5. A medical history and physical evaluation that was performed and entered into the medical record no more than thirty (30) days prior to surgery;

6. A surgical consent form that has been signed by the patient or his legal representative prior to the surgical procedure;

7. All preoperative diagnostic studies and laboratory tests;

8. Special examinations, such as consultations, clinical, laboratory, and x-ray;

9. Nurses' notes;

10. Complete medical record signed by the operating surgeon, including:

a. Anesthesia record;

b. Preoperative diagnosis:

c. Operative procedures and findings;

d. Postoperative diagnosis;

e. Condition of patient upon discharge;

f. Postoperative instructions; and

g. If required, tissue diagnosis by a pathologist on specimens surgically removed;

11. Charts including records of temperature, pulse, respiration, and blood pressure; and

12. Medication record including:

a. Name of medication;

b. Dosage;

c. Date and time of administration;

d. Method of administration;

e. Name of prescribing physician, dentist, or podiatrist; and

f. Name of person who administered the medication.

(b) Indexing. Medical records shall be systematically filed for ready access by[to] authorized personnel.

(c) Ownership. Records of patients shall not be removed from the center's custody except in accordance with a court order or subpoena. Medical records shall be made available if requested for inspection by duly authorized representatives of the cabinet.

(d) The attending physician, dentist, or podiatrist shall complete and sign the medical record of the patient as soon as practicable after discharge, but not to exceed ten (10) days.

(e)1. Orders for medication and treatment shall be dated, timed, and signed by the prescribing physician, dentist or podiatrist, or the health care practitioner who receives the verbal order.

2. Verbal orders shall be countersigned by the prescribing physician, dentist, or podiatrist within forty-eight (48) hours, except that records for Schedule II drugs shall be signed immediately.

3. A record of medication administered to the patient shall be included in the record and signed by the person administering the medication.

(f) Retention of records. Medical records shall be retained for a minimum of five (5) years or, in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(8) Bedrails shall be available for patients in the admitting and recovery units.

Section 3. Sanitary Environment. The surgical center shall

provide a sanitary environment to avoid sources and transmission of infections.

(1) An infection committee composed of members of the medical and nursing staff shall be established and be responsible for controlling and preventing infections within the center.

(2) Nondisposable sterile supplies shall be reprocessed if the integrity of the pack has not been maintained.

(3) The center shall have suitable equipment for rapid and routine sterilization of supplies, utensils and equipment and shall store them in a clean, convenient and orderly manner.

(4) Continuing education shall be provided to all surgical center personnel on the cause, effect, transmission, prevention and elimination of infections.

Section 4. Surgical Services (1) The center shall provide treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) The center shall have at least one (1) operating room.

(3) A patient shall be examined by a physician, dentist, or podiatrist acting within the professional's scope of practice immediately prior to surgery to evaluate the risk of anesthesia and the risk of the procedure to be performed.

(4) A registered nurse shall be available to circulate at all times. The operating rooms shall be supervised by a registered nurse.

(5) The center shall have on file a list of all physicians, dentists and podiatrists with surgical privileges at the center and the privileges assigned to each by the medical staff.

(6) The center shall maintain a complete and up-to-date operating room register.

(7) The following equipment shall be available in the center:

(a) Oxygen;

(b) Mechanical ventilatory assistance equipment including airways, manual breathing bag, and ventilator;

(c) Cardiac defibrillator;

(d) Cardiac monitoring equipment;

(e) Tracheostomy set,

(f) Laryngoscopes and endotracheal tubes;

(g) Suction equipment; and

(h) Emergency medical equipment and supplies specified by the medical staff.

(8) The center shall have arrangements for obtaining an adequate supply of blood in a timely manner to meet the center's needs.

(9) A physician's, dentist's, or podiatrist's orders shall be in writing and signed by the physician, dentist, or podiatrist.

(10) Except for cases requiring only local infiltration anesthetics, a physician anesthesiologist, a physician qualified to administer anesthesia, a dentist qualified to administer anesthesia, or a registered nurse anesthetist acting under the direction of the operating surgeon shall administer the anesthetics and remain present during the surgical procedures and until the patient is fully recovered from the anesthetics

(11) The physician, dentist, or podiatrist in charge of the patient shall be responsible for seeing that tissue removed during surgery is delivered to the center's pathologist and that an examination and report is made on the tissue, if required by the center's written policies.

(12) Voluntary interruption of pregnancies. An ambulatory surgical center shall comply with the applicable Kentucky statutes concerning the voluntary interruption of pregnancies, including KRS 311.710 to 311.810.

Section 5. Postanethesisa Recovery Services. (1) The center shall have at least one (1) postanesthesia recovery unit

(2) There shall be adequate staff available in the recovery unit so that no patient is left alone at any time.

(3) A registered nurse shall be present in the recovery unit when a patient is recovering from anesthesia.

(4) A registered nurse shall be available to the recovery unit at all times.

(5) A person staffing the postanesthesia recovery unit shall be adequately trained in all aspects of postoperative and postanesthetic care.

(6) The recovery unit nurse shall record a nursing note on a patient, noting the following:

(a) Postoperative abnormalities or complications;

(b) Pulse;

(c) Respiration;

(d) Blood pressure;

(e) Presence or absence of swallowing reflex;

(f) Cyanosis; and

(g) The general condition of the patient.

(7) Available equipment shall include the following:

(a) Suction machine;

(b) Stethoscope;

(c) Sphygmomanometer;

(d) Emergency crash cart;

(e) Necessary drugs; and

(f) Oxygen.

(8) The surgical center shall provide suitable accommodations for its patients. There shall be adequate floor space, furnishings, bed linens, and[~~such~~] other utensils, equipment and supplies[~~as are~~] reasonably required for the proper care of the patients accommodated.

Section 6. Pharmaceutical Services. (1) The center shall have a licensed pharmacy or have arrangements for promptly obtaining prescribed drugs and biologicals from a pharmacy.

(2) The center shall provide appropriate methods and procedures for storage, control and administration of drugs and biologicals, developed with the advice of a licensed pharmacist. The pharmacist shall properly label drugs for individual patients.

(3) Licensed medical or nursing personnel shall administer medications in accordance with **the established standards of practice set forth for:**

(a) Podiatrists licensed in accordance with KRS 311.400;

(b) Physicians licensed in accordance with KRS 311.571;

(c) Dentists licensed in accordance with KRS 313.040 or 313.045;

(d) Dental specialists licensed in accordance with KRS 313.420; or

(e) Nurses licensed in accordance with KRS 314.041, 314.042, or 314.051[~~medical and nursing standards of practice set forth in KRS 311.380 to.500, 311.530 to.620, 313.010 to 258, 313.400 to 470, 314.011 to.110, 314.193, and 314.195~~].

(4) Controlled substances.

(a) Controlled substances shall be kept under double lock (i.e., in a locked box in a locked cabinet). There shall be a controlled substances record in which is recorded the:

1. Name of the patient;

2. Date and time;

3. Kind of controlled substance;

4. Dosage and method of administration of the controlled substance;

5. Name of the physician who prescribed **the** controlled substance; and

6. Name of the nurse who administered it.

(b) In addition to the requirements established in paragraph (a) of this subsection, there shall be a recorded and signed:

1. Schedule II controlled substances count daily conducted by a member of the nursing staff, and

2. Schedule III, IV, and V controlled substances count once per week by a member of the nursing staff.

Section 7. Radiology Services. (1) The center shall provide radiology services directly through an agreement with a licensed hospital, or through an independent radiology service.

(2) The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852.

(3) If radiology services are provided directly by the center:

(a) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against;

1. Fire and explosion hazards;

2. Electrical hazards; and

3. Radiation hazards;

(b) A physician specializing in radiology shall supervise the

department and interpret films that require specialized knowledge for accurate reading;

(c) Signed reports shall be promptly entered into the medical record and duplicate copies kept in the department; and

(d) Orders for radiology procedures shall be made by a physician, dentist or podiatrist.

Section 8. Laboratory Services. (1) The center shall provide laboratory services directly through its own licensed laboratory, through an agreement with a laboratory in a licensed hospital, or through an agreement with a licensed laboratory nearby.

(2) The medical laboratory providing services to the center shall be licensed pursuant to KRS 333.030, unless it is a part of a licensed hospital.

(3) Laboratory examinations shall be made only upon the request of a physician, dentist, or podiatrist.[;]

(4) The laboratory shall provide tissue pathology and diagnostic cytology examinations. Tissues removed from a patient during surgery shall be examined by a physician specializing in pathology if required by the center's written policies.[; and]

(5) Laboratory and tissue pathology reports shall be signed and entered into the medical record.

Section 9. Utilization Review. (1) The surgical center shall have in effect a plan for utilization review of their services on at least a quarterly basis by a committee of physicians, dentists, or podiatrists who have no financial interest in the center.

(2) Reviews shall be made of admissions and professional services furnished including utilization of surgical services and tissue reports.

SADIQA N. REYNOLDS, Esq. Inspector General
JANIE MILLER, Secretary

APPROVED BY AGENCY: January 5, 2009

FILED WITH LRC: January 5, 2009 at 3 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, April 14, 2009)

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

RELATES TO: KRS 209.020(4), 216.557(1), 216.750(2), 216B.010-216B.131, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2095, 416 2096, 416 2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A 050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement with the U.S. Department of Health and Human Services Commissioner in effect, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416 2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Adult" is defined by KRS 209.020(4).

(2) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind or had a disability.

(3) "Department" means the Department for Community Based Services or its designee.

(4) "Elder Shelter Network" means a temporary shelter for a victim of elder abuse.

(5) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time

(6) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 921 KAR 2:006.

(7) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Mental Health, Developmental Disabilities, and Addiction [and Mental Retardation] Services to employ a mental health professional who has specialized training in the care of a resident with mental illness or mental retardation.

(8) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b)1. The total of the SSI payment, or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged, or

(c) The standard of need as specified in Section 8 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 6, 7, and 8 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 1:011, Sections 1(8)[(6)], 5(5), (6), (7), (13), 10, and 11;

(b) 907 KAR 1:640, Sections 1(1), (6), (7), (11), [(7), (8), (12),] 3(4)(a);

(c) 907 KAR 1:645;

(d) 907 KAR 1:650, Section 1(9)[1(7)]; and

(e) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2.050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2.050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 8 of this administrative regulation; and

(c)1. Resides in a personal care home and is sixteen (16) years of age or older in accordance with 902 KAR 20.036, Section 3(3)(a);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14); or

3. Receives caretaker services and is at least eighteen (18) years of age.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20.036; and

2. Is licensed under KRS 216B 010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker is required to be hired to provide care other than room and board.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation; or

b. Residence; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department office within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 9 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2 of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a caretaker shall be provided to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant.

1. The spouse;

2. Parent of an adult or minor child who has a disability; or

3. Adult child of a parent who is aged, blind or has a disability.

Section 6. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), [~~(7), (8), (12),~~] 3(4)(a);

(b) 907 KAR 1:645;

(c) 907 KAR 1:650, Section 1(9)[~~1(7)~~]; and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) $2000 for individual; or

(b) $3000 for couple.

Section 7. Income Considerations. (1) Except as noted in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 1:640, Sections 1(1), (6), (7), (11), [~~(7), (8), (12),~~] 3(4)(a);

(b) 907 KAR 1 645;

(c) 907 KAR 1:650, Section 1(9)[~~1(7)~~]; and

(d) 907 KAR 1:660, Sections 1(1), (5), 2(1), (2), (3), and (4).

(2) The optional supplementation payment shall be determined by:

(a) Adding:

1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1 and 2 of this subsection from the standard of need in Section 8 of this administrative regulation.

(3) Income of an ineligible spouse shall be.

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. Himself; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollars general exclusion shall not be

an allowable deduction from income.

(9)(a) For a resident in the Elder Shelter Network Program, income and resources of the spouse shall be disregarded for the month of separation.

(b) A third-party payment on behalf of an applicant or recipient made by the Elder Shelter Network Program shall be disregarded for ninety (90) days from the date of admission.

Section 8. Standard of Need. (1) To the extent funds are available, the standard of need is as follows:

(a) For a resident of a personal care home on or after January 1, 2009, $1,194 [~~2008, $1,157~~];

(b) For a resident of a family care home on or after January 1, 2009, $846 [~~2008, $809~~]; or

(c) For individuals who receive caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability on or after January 1, 2009, $736 [~~2008, $699~~];

2. An eligible couple, both aged, blind, or have a disability and one (1) requiring care on or after January 1, 2009, $1,072 [~~2008, $1,017~~]; or

3. An eligible couple, both aged, blind or have a disability and both requiring care on or after January 1, 2009, $1,126 [~~2008, $1,071~~].

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollars personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance that shall be retained by the client.

Section 9. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 10. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

Section 11. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 12. Persons with Mental Illness or Mental Retardation Supplement. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month;[.]

(b) Shall not be eligible for a payment for a Type A Citation that is not corrected; and

(c) Shall meet the following certification criteria for eligibility to participate in the Mental Illness or Mental Retardation Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a population that is thirty-five (35) percent mental illness or mental retardation clients in all of its occupied licensed personal care home beds and who have a:

a. Primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of Inspector General in accordance with Section 14(2) through (4) of this administrative regulation; and

6. File an [~~"~~]STS-1, Mental Illness or[/] Mental Retardation (MI/MR) Supplement Program Application for Benefits[~~"~~], with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July and October.

b. Unless mental illness or mental retardation supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall mail an [~~"~~]STS-2, Mental Illness or Mental Retardation (MI/MR) Supplement Program Notice of Decision to Personal Care Home[~~"~~] to a personal care home following:

(a) Receipt of verification from the Office of Inspector General as specified in Section 14(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an [~~"~~]STS-3, Mental Illness or[/] Mental Retardation (MI/MR) Supplement Program Monthly Report Form[~~"~~] that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the resident's Social Security number; and

3. Annotates the form, in order to maintain confidentiality, as follows with a:

a. Star indicating a resident has a mental illness or mental retardation diagnosis;

b. Check mark indicating a resident receives state supplementation; and

c. Star and a check mark indicating the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation; and

(b) Mail the STS-3 to the department postmarked by the fifth

working day of the month.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 13. Mental Illness or Mental Retardation Basic Training (1)(a) To the extent cabinet funds are available to support the training, a personal care home's licensed nurse, or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health, Developmental Disabilities, and Addiction [~~and Mental Retardation~~] Services.

(b) Other staff may attend the basic training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered.

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation;

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation; and

(f) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4) To assure that a staff member who has received basic training is always employed at the personal care home, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician training; and

2.a Has received mental illness or mental retardation basic training; or

b. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health, Developmental Disabilities, and Addiction [~~and Mental Retardation~~] Services may provide advanced level training for a personal care home.

(a) Advanced level training shall be provided through a one (1) day workshop.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with a resident who has a diagnosis of mental illness or mental retardation.

(d) Attendance of an advanced level training workshop shall be optional.

(6) The Department for Mental Health, Developmental Disabilities, and Addiction [~~and Mental Retardation~~] Services shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the workshop; and

(b) Listing to the department of staff who completed the training workshop.

(7) Unless staff turnover occurs as specified in subsection (4)(a) of this section, the department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the Persons with Mental Illness or Mental Retardation Supplement Program; and

(b) For each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 14. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program.

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216 530, and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2 of this subsection.

(c) The department shall notify the Office of Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Except for a specialized personal care home, certification is on file at the personal care home to verify staff's attendance of basic training, as specified in Section 13(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop; and

b. Maintains documentation of attendance at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician training:

a. Demonstrates a knowledge of psychotropic drug side affects; and

b. Is on duty as specified in Section 12(1)(c)3 of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the Persons with Mental Illness or Mental Retardation Supplement Program Certification Survey process.

(4) If thirty-five (35) percent of the population is mental illness or mental retardation clients, as specified in Section 12(1)(c)2 of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 12(6)(a) of this administrative regulation.

(6) The Office of Inspector General shall provide the department with a completed [-]STS-4, Mental Illness or[/] Mental Retardation (MI/MR) Supplement Certification Survey[-] within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216 530.

(7) The Office of Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall mail an STS-2 to a personal care home following receipt of the survey by the Office of Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the requested information on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is mailed.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2.046

(12) If a personal care home is discontinued from the Mental Illness or Mental Retardation Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 12(1)(c)6 of this administrative regulation, for the next following quarter.

Section 15. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference.

(a) "STS-1, Mental Illness or[/] Mental Retardation (MI/MR) Supplement Program Application for Benefits", edition 1/09[~~1/07~~];

(b) "STS-2, Mental Illness or Mental retardation (MI/MR) Supplement Program Notice of Decision to Personal Care Home", edition 1/09[~~1/07~~];

(c) "STS-3, Mental Illness or[/] Mental Retardation (MI/MR) Supplement Program Monthly Report Form", edition 1/09[~~1/07~~]; and

(d) "STS-4, Mental Illness or[/] Mental Retardation (MI/MR) Supplement Certification Survey", edition 1/09[~~1/07~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m to 4 30 p.m

PATRICIA R. WILSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: December 12, 2008

FILED WITH LRC: December 22, 2008 at 11 a m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(As Amended at ARRS, April 14, 2009)

921 KAR 4:116. Low Income Home Energy Assistance Program or "LIHEAP".

RELATES TO: KRS 194A.010, 194A.060, 194A.070, 45 C.F.R Part 96 Subpart H, 42 U S C. 8621-8627, 42 U.S.C. 9902(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 42 U S C. 8621

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has responsibility under 42 U.S.C. 8621 to administer the Low Income Home Energy Assistance Program to help low income households meet the cost of home energy. This administrative regulation establishes the eligibility and benefits criteria for heating and cooling assistance.

Section 1. Definitions. (1) "Agency" means [~~Kentucky Association for~~] Community Action Kentucky (KAC) ~~or "KACA"~~], or a local community action agency contracted to provide LIHEAP.

(2) "Annual low income home energy assistance program state plan" means an application prepared in accordance with 42 U.S C. 8624(c) and 45 C F.R Part 96, Subpart H, sections 96.83 to 96 87.

(3) "Authorized representative" means the person who presents to an agency a written statement signed by the head of the household, or spouse of the head of the household, authorizing that person to apply on the household's behalf.

(4) "Crisis component" means the component that provides assistance to households that are experiencing a home heating crisis.

(5) "Economic unit" means one (1) or more persons sharing common living arrangements.

(6) "Emergency" means, at the time of application, the household:

(a) Is without heat;

(b) Will be disconnected from a utility service within forty-eight (48) hours;

(c) Will be without bulk fuel within four (4) days; or

(d) Will be without cooling as specified in Section 3 of this administrative regulation.

(7) "Energy" means electricity, gas, and other fuel that is used to sustain reasonable living conditions

(8) "Gross household income" means all earned and unearned income, including lump sum payments received by a household during the calendar month preceding the month of application.

(9) "Heating season" means the period from October through April.

(10) "Household" means an individual or group of individuals who are living together in the principal residence as one (1) economic unit and who purchase energy in common

(11) "Household demographics" means an applicant's

(a) Address;

(b) Household composition that includes

1. Size;
2. Age group;
3 Relationship to applicant;
4. Sources of income;
5. Liquid assets; and
6. Type of housing; and

(c) Heat source.

(12) "Level of poverty" or "poverty level" means the degree to which a household's gross income matches the official poverty income guidelines published annually in the Federal Register by the U S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2)

(13) "Life-threatening situation" means, at the time of application, a household is or will[~~shall~~] be without heat or cooling within eighteen (18) hours and temperatures are at a dangerous level as

determined by the National Weather Service.

(14) "Poverty level" means the "level of poverty", as defined in subsection [12][~~12~~] of this section.

(15) "Principal residence" means the place:

(a) Where a person is living voluntarily and not on a temporary basis;

(b) An individual considers home;

(c) To which, when absent, an individual intends to return; and

(d) Is identifiable from another residence, commercial establishment, or institution.

(16) "Subsidy component" means the heating component that provides an eligible household with.

(a) A one (1) time annual payment to the household's energy provider; or

(b) Payment to a landlord, if utilities are included in the rent.

Section 2. Application. (1) A household or authorized representative applying for LIHEAP shall provide to an agency the following:

(a) Proof of household income;

(b) Statement of liquid resources;

(c) Most recent:

1. Heating bill,

2. Cooling bill; or

3. Verification that heating or cooling is included in the rent;

(d) Statement of household demographics; and

(e) A Social Security number, or a permanent residency card, for each household member.

(2) An application shall not be considered complete until the required information, as specified in subsection (1) of this section, is received by the agency

Section 3. Eligibility Criteria. (1) Income. Gross household income shall be at or below 130 percent of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(2) Liquid assets.

(a) The household shall have total liquid assets at time of application of not more than:

1. $2,000;

2. $3,000 if at least one (1) member in the household is:

a. Age sixty (60) or older; or

b. Disabled; or

3. $4,000, if a member of the household has an illness which requires liquid resources to be accessed regularly for medical and living expenses.

(b) An excluded asset shall be:

1. A vehicle;

2. Household goods;

3. Personal effects;

4 [~~A household or personal belonging,~~

~~3.~~] A principal residence;

5.[~~4.~~] Cash surrender value of an insurance policy;

6 [~~5.~~] A prepaid burial policy;

7 [~~6.~~] Real property; and

8 [~~7.~~] Cash on hand or in a bank account if the cash is considered as income as specified under subsection (1) of this section.

(3) The household shall be responsible for paying:

(a) Home heating;

(b) Cooling costs; or

(c) Heating or cooling costs as an undesignated portion of the rent.

(4) Crisis component. In addition to meeting the criteria in subsections (1) through (3) of this section, an applicant shall:

(a) Be within four (4) days of running out of fuel, if propane, fuel oil, coal, wood, or kerosene is the primary heat source;

(b) Have received a past-due or disconnect notice, if natural gas or electric is the primary heat source; or

(c) Have received a notice of eviction for nonpayment of rent, if home heating cost is included as an undesignated portion of the rent.

(5) Summer cooling component. In addition to meeting the criteria in subsections (1) through (3) of this section, to be eligible to receive a window air conditioner unit, an applicant shall:

(a) Be without an adequate source of cooling; and

(b) Have a household member who:

1. Has a health condition that requires cooling to prevent further deterioration, verified by a physician's statement prepared on the physician's letterhead,

2. Is sixty-five (65) years of age or older; or

3. Is under the age of six (6) years.

Section 4. Benefits. (1) For a subsidy component, payment to the household's heating fuel provider shall be made for the full benefit amount as follows:

(a) Benefits shall be determined prior to implementation of the component, based upon calculations from fuel usage data and from an average heating season energy cost for the six (6) primary heating fuels.

(b) The amount of benefits shall be based upon household income and type of heating fuel used.

(c) A household with the lowest income and highest heating season fuel cost shall receive highest benefits.

(d) Benefits shall be a percentage of the average annual heating season energy cost of the primary heating fuel.

(e) A household living in federally assisted housing or receiving a utility allowance shall be eligible for lower benefits.

(2) For a crisis component, benefits shall be the minimum amount necessary to alleviate a heating crisis. A household living in federally assisted housing may be eligible.

(a) A benefit may be:

1. Fuel or other energy source for heating;

2. A space heater loaned on a temporary basis until:

a. Fuel is delivered; or

b. Another resource is located to alleviate the crisis;

3. A blanket or sleeping bag; or

4. Emergency shelter.

(b) In determining the minimum amount of assistance, an agency shall take into consideration a direct subsidy for payment of utility cost received by the household from another program.

(c) A household may receive assistance more than one (1) time, but shall not receive more than the maximum allowable for the primary heating fuel, minus a required copayment. The maximum allowable benefit shall equal cost for delivery up to:

1. Two (2) tons of coal;

2. Two (2) cords of wood;

3. 200 gallons of propane;

4. 200 gallons of fuel oil,

5. 200 gallons of kerosene; or

6 a. $400 for natural gas or electric, effective January 1, 2009; or

b. $250 for natural gas or electric, effective July 1, 2009, unless:

(i) Program funding is enhanced through a federal or state award; and

(ii) The cabinet approves an increase to the benefit amount.

(d) A household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable payment for the primary heating fuel.

(e) An eligible household, including a household residing in:

1. Subsidized or nonsubsidized housing, with an income at or above seventy-five (75) percent of the poverty level shall make a copayment equal to a percentage of the benefit amount needed to relieve the crisis.

2. Subsidized housing and receiving a utility allowance shall pay a higher copayment amount.

(f) The copayment amount required by paragraph (e) of this subsection shall be based on housing type and the household's percentage of poverty, as follows:

Percent Of Poverty	Copayment Percentage of Benefit for Households Residing in Nonsubsidized Housing	Copayment Percentage of Benefit for Households Residing in Subsidized Housing
0-74%	0%	0%
75-100%	10%	15%
101-130%	15%	20%

(3) For cooling component benefits, a household shall be eligible for:

(a) A one (1) time annual payment to the household's:

1. Electric utility provider; or

2. Landlord, if the cost of cooling is included as an undesignated portion of the rent,

(b) A window air conditioner unit, if:

1. Criteria in Section 3(5) of this administrative regulation are met; and

2. The agency has the funding to purchase a window air conditioner unit or has a window air conditioner unit available for the household; and

(c) Benefits based on:

1. The household's level of poverty; and

2.a. Subsidized housing with:

(i) Zero percent to seventy-four (74) percent of poverty receiving up to fifty (50) dollars; or

(ii) Seventy-five (75) percent to 130 percent of poverty receiving up to seventy-five (75) dollars; or

b. Nonsubsidized housing with:

(i) Zero to seventy-four (74) percent of poverty receiving up to $175; or

(ii) Seventy-five (75) percent to 130 percent of poverty receiving up to $125.

Section 5. Benefit Delivery Methods. (1)(a) Payment under a subsidy component shall be authorized by a one (1) party check made payable to the household's:

1. Energy provider; or

2. Landlord, if the cost of heating is included as an undesignated portion of rent.

(b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider if heating services were provided by more than one (1) provider. However, the total amount of the payments shall not exceed the maximum for the primary source of heating.

(2) For a crisis component, a direct cash payment shall not be made to the recipient. A payment shall be authorized to:

(a) An energy provider by a one (1) party check upon delivery of fuel, restoration, or continuation of service;

(b) A vendor who supplies a heater, blanket, or emergency lodging; or

(c) A landlord, if heating cost is included in the rent.

(3) For the cooling component, cash benefits shall be paid to a:

(a) Household's electric utility provider; or

(b) Landlord, if cooling cost is included in the rent.

Section 6. Right to a Fair Hearing (1) An individual who has been denied assistance or whose application has not been acted upon in accordance with time standards in Section 8 of this administrative regulation shall be provided an administrative review by the agency.

(2) An individual dissatisfied with the results of an administrative review may request a hearing to be held in accordance with 921 KAR 2.055.

Section 7. Vendor Selection for Nonmetered Fuel Provider. (1) Subsidy component.

(a) An agency shall solicit vendors for all nonmetered fuels and shall establish an approved vendor listing.

(b) The agency shall place an advertisement for interested vendors in a local newspaper with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.

(c) A potential vendor shall provide the agency with a fixed price in gallons for kerosene, propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.

(d) A prospective vendor shall:

1. Allow agency and authorized federal or state representatives to inspect records upon request;

2. Maintain records to financial transactions regarding LIHEAP for a period of three (3) years;

3. Inform the agency if information is received that a household has obtained a benefit by misrepresentation;

4. Provide fuel as specified and at the price quoted;

5. Comply with federal and state law pertaining to equal employment opportunity; and

6. Comply with billing procedures established by the agency.

(e) A household shall select a vendor from the agency's approved vendor list.

(2) Crisis component.

(a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pick-up for each fuel type.

(b) Each agency shall maintain a list of approved vendors and prices throughout the crisis component.

(c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of delivery.

(d) For a household with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within:

1. Eighteen (18) hours for a life-threatening situation; or

2. Forty-eight (48) hours for an emergency situation.

Section 8. Time Standards. (1) Under a subsidy component, an eligibility determination shall be made by an agency within five (5) working days after receipt of information required by Section 2 of this administrative regulation.

(2) Under a crisis or cooling component, benefits shall be authorized so that a:

(a) Crisis situation is resolved within forty-eight (48) hours; or

(b) Life-threatening situation is resolved within eighteen (18) hours.

(3) Under a subsidy, crisis or cooling component, an applicant shall have five (5) working days from the date of application to provide required information to an agency as specified in Section 2 of this administrative regulation, or the application shall be denied.

Section 9. Effective Dates. (1) Implementation and termination dates for LIHEAP shall depend upon the availability of funds.

(2) If additional federal funds are made available, LIHEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation.

Section 10. Allocation of Federal Funds. (1) An amount of federal funds sufficient to provide benefits to eligible households that apply during the subsidy application period shall be reserved for a subsidy component.

(2) The balance of benefit funds for LIHEAP shall be reserved for a crisis component as follows:

(a) Benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's percentage of the statewide population at or below 100 percent of the poverty level.

(b) $400,000 of crisis benefit funds shall be identified as contingency funds and allocated to agencies based on need as approved in advance by the cabinet [~~as needed~~].

(3) $25,000 or more shall be reserved for the Preventive Assistance Program to assist families with an energy payment not to exceed $300 for each family if the payment:

(a) Prevents the removal of a child from the family; or

(b) Assists in reuniting a child with the family.

Section 11. Energy Provider Responsibilities. A provider accepting payment from LIHEAP for energy or services provided to an eligible recipient shall comply with the following provisions:

(1) Reconnection of utilities and delivery of fuel during a crisis component shall be accomplished upon certification for payment.

(2) A household shall be charged, in the normal billing process, the difference between actual cost of the home energy and amount of payment made through this program.

(3) A LIHEAP recipient shall be treated the same as a household not receiving benefits.

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.

(5) A landlord shall not increase the rent of a recipient house-

hold due to receipt of a LIHEAP payment.

Section 12. Annual Plan. A copy of the state's annual Low Income Home Energy Assistance Program state plan prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87 may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

JANIE MILLER, Secretary
APPROVED BY AGENCY: December 12, 2008
FILED WITH LRC: December 22, 2008 at 11 a.m.
CONTACT PERSON. Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
Division of Placement Services
(Amended After Comments)

505 KAR 1:100. Department of Juvenile Justice Policies and Procedures: admissions.

RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A 067, 15A.160, 200.115, 605.150, 635 095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

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

(a) The "Department of Juvenile Justice Policy and Procedures Manual: Admissions", April 15, 2009[~~January 15, 2009~~][~~April 13, 2006~~], which includes the following:

200 Classification (Amended 4/15/09[~~1/15/09~~][~~01/13/06~~])

200.1 Day Treatment Admissions (Amended 1/15/09[~~01/13/06~~])

202 Waiting List (Amended 1/15/09[~~01/13/06~~])

204 Daily Census and Population (Amended 1/15/09[~~01/13/06~~])

206 Administrative Transfers (Amended 1/15/09[~~01/13/06~~])

208 Youth Rights/Orientation (Amended 1/15/09[~~04/13/06~~])

209 Youth Access to Outside Investigative Agencies[~~Units~~] (Amended 04/15/09[~~1/15/09~~][~~04/13/06~~])

210 Interstate Referrals (Amended 1/15/09[~~01/13/06~~])

211 Interstate Runaways, Escapees and Absconders (Amended 1/15/09[~~01/13/06~~])

212 Interstate[~~Out-of-State~~] Purchase of Care (Amended 1/15/09[~~01/13/06~~])

213 Interstate Travel (Amended 1/15/09[~~01/13/06~~])

214 Interstate Revocations and Case Closure (Amended 1/15/09[~~01/13/06~~])

217 Advanced[~~Advance~~] Care Unit (01/15/09)[~~04/13/06~~].

(b) The "Classification and Placement[~~Assessment~~] Manual", Amended 04/15/09[~~(01/15/09)~~][~~04/13/06~~];

(c) The "Youth Level of Service/Case Management Inventory (YLS/CMI), User's Manual", 01/13/06;

(d) The "Child and Adolescent Service Intensity Instrument (CASII)", also known as "Child and Adolescent Level of Care Utilization System(CALOCUS)", 01/13/06;

(e) The "Estimate of Risk of Adolescence Sex Offense Recidivism (ERASOR)", 01/13/06; and

(f) The "Juvenile Sex Offender Assessment Protocol (J-SOAP)", 01/13/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4.30 p.m.

J. RONALD HAWS, Commissioner

APPROVED BY AGENCY: April 15, 2009

FILED WITH LRC: April 15, 2009 at 10 a.m.

CONTACT PERSON: LaDonna Koebel, Staff Attorney, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: LaDonna Koebel, Staff Attorney

(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 Department of Juvenile Justice including the rights and responsibilities of the Department of Juvenile Justice employees and the residential and community populations.

(b) The necessity of this administrative regulation To conform to the requirements of KRS 15A.065 and 15A.067.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the admissions of the Department of Juvenile Justice.

(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 the Department of Juvenile Justice employees and the residential and community population as to their duties, rights, privileges, and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment shall bring the Department of Juvenile Justice into compliance with ACA Standards and show actual practice of the agency.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.065 and 15A.067.

(c) How the amendment conforms to the content of the authorizing statues: It permits the Commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Department of Juvenile Justice.

(d) How the amendment will assist in the effective administration of the statues: The amendment will help the Department of Juvenile Justice to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 1,460 employees of the residential programs, Approximately 2,279[~~2,267~~] youth in all programs, all visitors and volunteers to Department of Juvenile Justice facilities

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: To ensure youth are placed in the least restrictive alternative setting, and to provide a clearer understanding of the policies and procedures by employees and residents, thereby impacting the security and safety of the agency and the public.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: $1,000

(b) On a continuing basis: $500

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 2008 - 2010 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 fees: None

(9) TIERING: Is Tiering applied? No. Tiering was not appropriate to 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 question 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 the Sections 2 and 3 of the

Kentucky Constitution.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
(Amended After Comments)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130
STATUTORY AUTHORITY: KRS 194A 030, 194A.050(1), 216B.010, 216B.015(27), 216B 040(2)(a)2a
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B 040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The **2009 Update to the 2007-2009 State Health Plan as amended June 2009**[~~2008 update to the 2007-2009 State Health Plan as amended December 31, 2008~~][~~2007-2009 State Health Plan as amended October 15, 2007~~] shall be used to:
(1) Review a certificate of need application pursuant to KRS 216B.040; and
(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B 015(28)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The **2009 Update to the 2007-2009 State Health Plan as amended June 2009**[~~2008 update to the 2007-2009 State Health Plan as amended December 31, 2008~~] [~~2007-2009 State Health Plan as amended December 17, 2007~~] is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Certificate of Need, 275 East Main Street, fourth floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4 30 p m.

CARRIE BANAHAN, Executive Director
JANIE MILLER, Secretary
APPROVED BY AGENCY: April 14, 2009
FILED WITH LRC: April 15, 2009 at 10 a m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Contact Person: Shane P. O'Donley
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates by reference the State Health Plan, which is used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040.
(b) The necessity of this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2007-2009 State Health Plan by reference.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation of the State Health Plan is required by KRS Chapter 216B.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The preparation of the State Health Plan is required by KRS Chapter 216B.
(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 2007-2009 State Health Plan for 2007.
(b) The necessity of the amendment to this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially. The last triennial State Health Plan was prepared in 2005, so the next triennial plan is being prepared for 2007-2009.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.015(27) that the State Health Plan be updated on an annual basis.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated State Health Plan for purposes of certificate of need review.
(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 health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The modifications will only apply to potential Certificate of Need applicants for Psychiatric Hospital Beds, Home Health Services, Adult Day Health Care Programs, Magnetic Resonance Imaging Equipment, Megavoltage Radiation Therapy Equipment, Positron Emission Tomography Equipment and Prescribed Pediatric Extended Care Facilities.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. The CON application fee is unaffected by this proposed amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) Applicants proposing to establish adult day health programs and/or prescribed pediatric extended care facilities will benefit from an expedited review process because those service categories have been removed from the State Health Plan. These changes may increase access to adult day health care services for the elderly and prescribed pediatric extended care facilities for our medically needy children and their working parents.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually This administrative regulation incorporates the 2007-2009 State Health Plan by reference.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenues will be generated to state or local government.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Commissioner's Office
(Amended After Comments)

907 KAR 3:170. Telehealth consultation coverage[services] and reimbursement.

RELATES TO: KRS Chapter 12, **205.510(15)**, [~~11 550,~~] 194A.060, 205.559, 205.560, 422.317, 434.840-434.860, 42 C.F.R. 415.174, 415.184, 431.300-431 307, 440 50

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(2), (7), 205.560

NECESSITY, FUNCTION, AND CONFORMITY. The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers and KRS 205.559(2) and (7) require the cabinet to promulgate an administrative regulation relating to telehealth **consultations**[services] and reimbursement. This administrative regulation establishes the **Department for Medicaid Services' coverage and reimbursement provisions relating to telehealth consultations**[coverage provisions relating to telehealth services and the method of determining reimbursement for services by the Department for Medicaid Services] in accordance with KRS 205.559.

Section 1. Definitions. (1) "Advanced registered nurse practitioner" or "ARNP" is defined by KRS 314 011(7).

(2) "Certified nutritionist" is defined by KRS 310 005(12).

(3) **"Chiropractor" is defined by KRS 312.015(3).**

(4) "Community mental health center" or "CMHC" means a facility that provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485. [(4)][(2)]["Consultation" means a type of evaluation and management service as defined by the most recent edition of the Current Procedural Terminology published annually by the American Medical Association.]

(5)[(3)] "CPT code" means a code used for reporting procedures and services performed by physicians or other licensed medical professionals which is published annually by the American Medical Association in Current Procedural Terminology.

(6)[(4)] "Department" means the Department for Medicaid Services or its designated agent.

(7) "Encounter" means one (1) visit by a recipient to a telehealth spoke site where the recipient receives a **telehealth consultation in real time**[service or care], during the visit, from a provider at a telehealth hub site

(8) "Federal financial participation" is defined in 42 C F R 400 203

(9)[(5)] "GT modifier" means a modifier that identifies a telehealth **consultation**[service] which is approved by the healthcare common procedure coding system (HCPCS).

(10)[(6)] **"Health care common procedure coding system" or "HCPCS" is a set of health care procedure codes based on the American Medical Association's current procedural terminology (CPT).**

(11)[(6)] "Health care provider" means a Medicaid-enrolled provider, in accordance with 907 KAR 1.671 and 907 KAR 1:672 who is a:

(a) Licensed physician;

(b) Licensed advanced registered nurse practitioner;

(c) Certified physician assistant working under physician supervision;

(d) Licensed dentist or oral surgeon, [or]

(e) Community mental health center;

(f) Psychologist with a license in accordance with KRS 319 010(5),[or]

(g) Licensed clinical social worker; **or**

(h) Chiropractor.

(12)[(11)][(7)] "Hub site" means a telehealth site where the telehealth provider performs telehealth[medical specialist providing the telehealth service is located] and is considered the place of service.

(13)[(12)] "International statistical classification of disease code" or "ICD code" means the most current code classifying a disease or wide variety of signs, symptoms, abnormal findings, complaints, social circumstances, or external causes of injury or disease, up to six (6) characters long and published by the World Health Organization.

(14)[(13)][(8)] "KenPAC" means the Kentucky Patient Access and Care system.

(15)[(14)][(9)] "KenPAC PCCM" means a Medicaid provider who is enrolled as a primary care case manager in the Kentucky Patient Access and Care System.

(16)[(15)][(10)] "Legally-authorized representative" means a Medicaid recipient's parent or guardian if a recipient is a minor child, or a person with power of attorney for a recipient.

(17)[(16)] "Licensed clinical social worker" means an individual meeting the licensure requirements established in KRS 335 100.

(18)[(17)] "Licensed dietitian" is defined by KRS 310 005(11).

(19)[(18)] "Licensed marriage and family therapist" is defined by KRS 335 300(3)

(20)[(19)] "Licensed professional clinical counselor" is defined by KRS 335 500(3)

(21)[(20)][(11)] "Medical necessity" or "medically necessary" means a covered benefit is determined to be needed in accordance with 907 KAR 3.130.

(22)[(21)] "Occupational therapist" is defined by KRS 319A 010(3).

(23)[(22)] "Physical therapist" is defined by KRS 327.010(2).

(24)[(23)] "Physician" is defined by KRS 311 550(12)

(25)[(24)] "Psychiatric medical resident" means an individual who:

(a) Possesses a special faculty license in accordance with KRS 311.550(29);

(b) Meets the qualification for licensure requirements established in KRS 311 571(1) or (2); and

(c) Is a resident as defined by 42 C F R. 415 152

(26)[(25)] "Psychiatric registered nurse" means a registered

nurse who:

(a) Has a master of science in nursing with a specialty in psychiatric or mental health nursing;

(b) Has a bachelor of science in nursing and at least one (1) year of experience in a mental health setting;

(c) Is a graduate (possesses of a diploma) of a three (3)-year educational program and has at least two (2) years of experience in a mental health setting;

(d) Has an associate degree in nursing and at least three (3) years of experience in a mental health setting; or

(e) Has any level of education with American Nursing Association (ANA) certification as a psychiatric or mental health nurse.

(27)[~~(26)~~] "Psychologist" is defined by KRS 319.010(8)

(28)[~~(27)~~] "Registered nurse" is defined by KRS 314.011(5)

(29)[~~(28)~~] "Speech-language pathologist" is defined by KRS 334A.020(3).

~~(30)[(29)][(12) "Medical specialist" means a physician specialist, an oral surgeon, or a CMHC as specified in Section 4(1) of this administrative regulation.~~

~~(13) "Recipient" is defined by KRS 205.8451(9).~~

~~(14)~~] "Spoke site" means a telehealth site where the recipient receiving the telehealth **consultation**[~~service~~] is located.

(31)[~~(30)~~] "Telehealth consultation" is defined by KRS 205.510(15).

(32) "Telehealth provider" means a Medicaid-enrolled provider, in accordance with 907 KAR 1:671 and 907 KAR 1:672, **performing a telehealth consultation**[~~providing telehealth~~] at a hub site.

~~(33)[(31)][(15)]["Telehealth service" means a medical service provided through advanced telecommunications technology from a hub site to a recipient at a spoke site.~~

~~(32)][(16)~~] "Telehealth site" means a hub site or spoke site that has been approved as part of a telehealth network established in accordance with KRS 194A.125[~~11.550~~].

(34)[~~(33)~~] "Telepresenter" means an individual operating telehealth equipment at a spoke site to enable a recipient to receive a telehealth **consultation**[~~service~~].

~~(35)[(34)][(17) "Telepresenter" means a person with the patient during the time of the encounter, who aids in the examination by following the orders of the consulting clinician, including the manipulation of cameras and appropriate placement of other peripheral devices used to conduct the patient examination.~~

~~(18)~~] "Transmission cost" means the cost of the telephone line and related costs incurred during the time of the transmission of a telehealth **consultation**[~~service~~].

(36)[~~(35)~~][~~(19)~~] "Two (2) way interactive video" means a type of advanced telecommunications technology that permits a real time **telehealth consultation**[~~service~~] to take place between a recipient and a telepresenter at the spoke site and a **telehealth provider**[~~medical specialist~~] at the hub site.

Section 2. Telehealth Coverage For Telehealth Not Provided in a Community Mental Health Center (1) The department shall reimburse for the following telehealth **consultations**[~~activity~~] not provided via a community mental health center in accordance with the following provisions.

(a) Wound care with a CPT code of 97601 or 97602 provided by a physician or advanced registered nurse practitioner.

(b) A service, provided by a physician, **chiropractor**, or ARNP, which has an evaluation and management code of 99201 through 99215; and

(c) A service, provided by a physician, **chiropractor**, or ARNP, with an evaluation and management code of 99241 through 99255;

(d) A psychiatric diagnosis or evaluation interview with a CPT code of 90801 through 90802 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

6. A physician; or

7. An ARNP;

(e) Outpatient individual psychotherapy with a CPT code of 90804 through 90809 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(f) Outpatient individual interactive psychotherapy with a CPT code of 90810 through 90815 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(g) Inpatient individual psychotherapy with a CPT code of 90816 through 90822 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist[~~telehealth~~] if the psychiatrist also interacts with the recipient during the telehealth encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(h) Inpatient individual interactive psychotherapy with a CPT code of 90823 through 90829 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [~~telehealth~~] encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly em-

ployed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(i) Other psychotherapy with a CPT code of 90845 through 90846 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(j) Family therapy with a CPT code of 90847 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(k) Family or group psychotherapy with a CPT code of 90849 through 90857 if provided by:

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year;

(l) Psychiatric medication management with a CPT code of 90862 if provided by:

1. A psychiatrist;

2. A physician not to exceed four (4) encounters per recipient per year; or

3. An ARNP not to exceed four (4) encounters per recipient per year;

(m) Interpretation of data to family or others with a CPT code of 90887 if provided by:

1. A psychiatrist;

2. A physician not to exceed four (4) encounters per recipient per year; or

3. An ARNP not to exceed four (4) encounters per recipient per year;

(n) A dialysis related service with a CPT code of 90918 through 90925 if provided by a physician;

(o) Initial visit with a CPT code of 99304 through 99305 to a new or established patient in a nursing home if provided by a physician or ARNP;

(p) Subsequent visit with a CPT code of 99308 through 99310 to a patient in a nursing home if provided by a physician or ARNP;

(q) Discharge of a patient from a nursing home with a CPT code of 99315 if provided by a physician or ARNP;

(r) Speech therapy evaluation with a CPT code of 92056 if provided by a speech-language pathologist;

(s) Speech therapy treatment with a CPT code of 92057 if provided by a speech-language pathologist;

(t) Occupational therapy with a CPT code of 97003[97001] if provided by an occupational therapist;

(u) Physical therapy with a CPT code of 97001[97004] if provided by a physical therapist;

(v) Individual medical nutrition therapy with a CPT code of G0270 or 97802 through 97804 if provided by a licensed dietitian or certified nutritionist;

(w) End stage renal disease services with an HCPCS[a CPT] code of G0308, G0309, G0311, G0314, G0315, G0317, or G0318 if provided by a physician or ARNP; [or]

(x) A neurobehavioral status exam with a CPT code of 96116 if provided by

1. A psychiatrist;

2. A licensed clinical social worker directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

3. A psychologist with a license in accordance with KRS 319.010(5) and a doctorate degree in psychology directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

4. A licensed professional clinical counselor directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

5. A licensed marriage and family therapist directly employed by a psychiatrist if the psychiatrist also interacts with the recipient during the [telehealth] encounter;

6. A physician not to exceed four (4) encounters per recipient per year; or

7. An ARNP not to exceed four (4) encounters per recipient per year; **or**

(y) Patient education regarding diabetes care planning including nutrition, exercise, medication, or blood glucose testing equipment:

1. If provided by physician or advanced registered nurse practitioner; and

2. With a corresponding:

a. HCPCS code of G0108; or

b. CPT code of 97802.

(2) The department shall not reimburse for a telehealth **consultation if the consultation**[service if the service] is not medically necessary.

(3) The department shall not reimburse for a **telehealth consultation**[service] via this administrative regulation if the **telehealth consultation**[service] requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371.

(4) A telehealth **consultation**[service] shall require:

(a) The use of two (2) way interactive video;

(b) A referral by a health care provider;

(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and

(d) A referral by a recipient's lock-in provider if the recipient is locked-in pursuant to 42 C F R. 431.54 and 907 KAR 1:677.

Section 3. Coverage of Telehealth Provided by a Community Mental Health Center.

(1) The department shall reimburse for the following telehealth **consultation**[activity] provided via a community mental health center in accordance with the following provisions:

(a) A psychiatric diagnosis or evaluation interview with a CPT code of 90801 through 90802 if provided by:

1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;

(b) Outpatient individual psychotherapy with a CPT code of 90804 through 90809 if provided by:

1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;

(c) Outpatient individual interactive psychotherapy with a CPT code of 90810 through 90815 if provided by:

1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;

(d) Inpatient individual psychotherapy with a CPT code of 90816 through 90822 if provided by:

1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;

(e) Inpatient individual interactive psychotherapy with a CPT code of 90823 through 90829 if provided by:

1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;

(f) Other psychotherapy with a CPT code of 90845 through 90846 if provided by:

1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;

(g) Family therapy with a CPT code of 90847 if provided by:

1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;

(h) Family or group psychotherapy with a CPT code of 90849 through 90857 if provided by:

1. A psychiatrist;
2. A physician;
3. A psychologist with a license in accordance with KRS 319.010(5);
4. A licensed marriage and family therapist;
5. A licensed professional clinical counselor;
6. A psychiatric medical resident;
7. A psychiatric registered nurse;
8. A licensed clinical social worker; or
9. An advanced registered nurse practitioner;

(i) Psychiatric medication management with a CPT code of 90862 if provided by:

1. A psychiatrist;
2. A physician;
3. A psychiatric medical resident, or
4. An ARNP;

(j) Interpretation of data to family or others with a CPT code of 90887 if provided by:

1. A psychiatrist;
2. A physician; or
3. An ARNP; or

(k) A neurobehavioral status exam with a CPT code of 96116 if provided by:

1. A psychiatrist; or
2. A psychologist with a license in accordance with KRS 319.010(5).

(2) The department shall not reimburse for a telehealth **consultation if the consultation**[service if the service] is not medically necessary.

(3) The department shall not reimburse for a **telehealth consultation**[service] via this administrative regulation if the **telehealth consultation**[service] requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371.

(4) A telehealth **consultation**[service] shall require:

(a) The use of two (2) way interactive video;

(b) A referral by a health care provider;

(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and

(d) A referral by a recipient's lock-in provider if the recipient is locked-in pursuant to 42 C.F.R. 431.54 and 907 KAR 1:677.

Section 4. [~~Covered Services. (1) Except as restricted in accordance with Section 3 of this administrative regulation, a telehealth service shall be covered if medically necessary.~~

~~(2) A telehealth service shall require:~~

~~(a) The use of two (2) way interactive video;~~

~~(b) A referral by a health care provider specified in Section 4(2) of this administrative regulation;~~

~~(c) A referral by a recipient's KenPAC PCCM if the comparable nontelehealth service requires a KenPAC PCCM referral; and~~

~~(d) A referral by a recipient's lock-in provider if the recipient is locked-in pursuant to 42 C.F.R. 431.54 and 907 KAR 1:677.~~

~~Section 3. Limitations. (1) Coverage of telehealth services for a provider that is not a community mental health center shall be li-~~

~~mited to a maximum of four (4) telehealth services per recipient per year if provided as follows:~~

~~(a) For a recipient age twenty-one (21) years and older, the evaluation and management consultation CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; or~~

~~(b) For a recipient under the age of twenty-one (21) years:~~

~~1. The evaluation and management consultation CPT codes 99241 through 99275 may be billed as a telehealth service if provided by a medical specialist specified in Section 4(1) of this administrative regulation; and~~

~~2. Psychiatric diagnostic evaluation CPT code 90801 and individual psychotherapy CPT codes 90804 through 90809 may be billed as a telehealth service if provided by a psychiatrist.~~

~~(2) Coverage for a telehealth service for a CMHC shall be limited to 12 psychiatric services per recipient per year and shall be billed using the following CPT codes for the following corresponding services:~~

~~(a) 90801 for a diagnostic interview examination;~~

~~(b) 90862 for medication management;~~

~~(c) 90887 for an outpatient collateral;~~

~~(d) 90804 for an individual psychotherapy; or~~

~~(e) 90847 for an outpatient family therapy.~~

~~(3) Coverage shall not be provided for a service that requires face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371.~~

~~Section 4. Eligible Providers. (1) A medical specialist at a hub site shall be enrolled as a Medicaid provider pursuant to 907 KAR 1.671 and 907 KAR 1.672 and shall be:~~

~~(a) For a provider that is not a community mental health center, a licensed physician in one (1) of the following specialties or subspecialties:~~

~~1. Dermatology;~~

~~2. Emergency medicine;~~

~~3. An internal medicine subspecialty;~~

~~4. General surgery or a surgery subspecialty;~~

~~5. Neurology;~~

~~6. Obstetrics and gynecology;~~

~~7. A pediatric subspecialty;~~

~~8. Psychiatry;~~

~~9. Radiology or radiation medicine; or~~

~~10. A licensed oral surgeon; or~~

~~(b) For a CMHC:~~

~~1. A psychiatrist; or~~

~~2. An advanced registered nurse practitioner.~~

~~(2) A health care provider requesting a telehealth service shall be an enrolled Medicaid provider who is a:~~

~~(a) Licensed physician;~~

~~(b) Licensed advanced registered nurse practitioner;~~

~~(c) Certified physician assistant working under physician supervision;~~

~~(d) Licensed dentist or oral surgeon; or~~

~~(e) CMHC.~~

~~Section 5.~~] Reimbursement. (1) The department shall reimburse a telehealth provider[~~medical specialist located at a hub site~~] for a telehealth **consultation**[~~service~~]:

(a) Except for a **telehealth consultation**[~~service~~] provided by an ARNP or CMHC, an amount equal to the amount paid for a comparable in-person service in accordance with 907 KAR 3.010; [~~or~~]

(b) If a CMHC, in accordance with 907 KAR 1:045; or

(c) An amount equal to the amount paid for a comparable in person service in accordance with 907 KAR 1:104 if provided by an ARNP.

(2) A telehealth provider[~~medical specialist~~] shall bill for a **telehealth consultation using the appropriate ICD code or evaluation and management CPT or HCPCS code**[~~service using the appropriate evaluation and management CPT code or ICD code~~]as specified in Section 2 or 3 of this administrative regulation along with the corresponding[~~with the addition of the~~] two (2) letter "GT" modifier.

(3) The department shall not require the presence of a health care provider requesting a telehealth **consultation**[~~service~~] at the time of the telehealth **consultation**[~~service~~] unless it is requested by a telehealth provider[~~medical specialist~~] at the hub site.

(4) The department shall not reimburse[~~Reimbursement shall not be made~~] for transmission costs.

Section 5 [~~6.~~] Confidentiality and Data Integrity. (1) A telehealth **consultation**[~~service~~] shall be performed on a secure telecommunications line or utilize a method of encryption adequate to protect the confidentiality and integrity of the telehealth **consultation**[~~service~~] information.

(2) Both a hub site and a spoke site shall use authentication and identification to ensure the confidentiality of a telehealth **consultation**[~~service~~].

(3) A provider of a telehealth **consultation**[~~service~~] shall implement confidentiality protocols that include:

(a) Identifying personnel who have access to a telehealth transmission;

(b) Usage of unique passwords or identifiers for each employee or person with access to a telehealth transmission; and

(c) Preventing unauthorized access to a telehealth transmission.

(4) A provider's protocols and guidelines shall be available for inspection by the department upon request.

Section 6 [~~7.~~] Informed Consent. (1) Before providing a telehealth **consultation**[~~service~~] to a recipient, a health care provider shall document written informed consent from the recipient and shall ensure that the following written information is provided to the recipient in a format and manner that the recipient is able to understand:

(a) The recipient shall have the option to refuse the telehealth **consultation**[~~service~~] at any time without affecting the right to future care or treatment and without risking the loss or withdrawal of a Medicaid benefit to which the recipient is entitled;

(b) The recipient shall be informed of alternatives to the telehealth **consultation**[~~service~~] that are available to the recipient,

(c) The recipient shall have access to medical information resulting from the telehealth **consultation**[~~service~~] as provided by law;

(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth **consultation shall comply with 42 U.S.C. 1301 et seq., 45 C.F.R. Parts 160, 162, 164, KRS 205.566, 216.2927, and any other federal law or regulation or state law establishing individual health care data confidentiality provisions**[~~service shall not occur without the written informed consent of the recipient or the recipient's legally-authorized representative~~];

(e) The recipient shall have the right to be informed of the parties who will be present at the spoke site and the hub site during the telehealth **consultation**[~~service~~] and shall have the right to exclude anyone from either site; and

(f) The recipient shall have the right to object to the video taping of a telehealth **consultation**[~~service~~].

(2) A copy of the signed informed consent shall be retained in the recipient's medical record and provided to the recipient or the recipient's legally-authorized representative upon request.

(3) The requirement to obtain informed consent before providing a **telehealth consultation**[~~service~~] shall not apply to an emergency situation if the recipient is unable to provide informed consent and the recipient's legally-authorized representative is unavailable.

Section 7 [~~8.~~] Medical Records. (1) A request for a telehealth **consultation**[~~service~~] from a [~~physician or other~~] health care provider [~~specified in Section 4(2) of this administrative regulation~~] and the medical necessity for the telehealth **consultation**[~~service~~] shall be documented in the recipient's medical record.

(2) A health care provider shall keep a complete medical record of a telehealth **consultation**[~~service~~] provided to a recipient and follow applicable state and federal statutes and regulations for medical recordkeeping and confidentiality in accordance with KRS 194A.060, 422.317, 434.840 - 434.860, [~~and~~]42 C.F.R. 431.300 to

431.307, and 45 C.F.R. 164.530(j)

(3) A medical record of a telehealth consultation[service] shall be maintained in compliance with 907 KAR 1:672 and 45 C.F.R. 164.530(j).

(4) Documentation of a telehealth consultation[service] by the referring health care provider shall be included in the recipient's medical record and shall include.

(a) The diagnosis and treatment plan resulting from the telehealth consultation[service] and a progress note by the referring health care provider if present at the spoke site during the telehealth consultation[service];

(b) The location of the hub site and spoke site;

(c) A copy of the signed informed consent form; and

(d) Documentation supporting the medical necessity of the telehealth consultation[service].

(5)(a) A telehealth provider's[A medical specialist's] diagnosis and recommendations resulting from a telehealth consultation[service] shall be documented in the recipient's medical record at the recipient's location.

(b) A telehealth provider[The medical specialist] shall send a written report regarding a telehealth consultation within thirty (30) days of the consultation[service] to the referring health care provider.

Section 8 Federal Financial Participation A provision established in this administrative regulation shall be effective contingent upon the department's receipt of federal financial participation for the respective provision.

Section 9. [School-based Telehealth (1) The provisions of this section shall apply only upon approval of a school-based telehealth program by the Telehealth Board established in KRS 11.550.

(2) Effective through October 31, 2007, the department shall cover a primary care telehealth service delivered by a hub site identified in subsection (3) of this section to a public school spoke site identified in subsection (4) of this section.

(3) The following facilities shall be designated as a hub site for the purposes of this section:

(a) St. Claire Regional Medical Center and its community primary care clinics;

(b) Glasgow Family Practice Residency Program; and

(c) Lewis County Primary Care Center.

(4) The following public schools shall be designated as a spoke site for the purposes of this section.

(a) Bath County Middle School;

(b) Botts Elementary School;

(c) Olive Hill Elementary School;

(d) Rowan County High School;

(e) Rowan County Middle School;

(f) Clearfield Elementary School;

(g) McBrayer Elementary School;

(h) Rodburn Elementary School;

(i) Tilden Hogge Elementary School;

(j) North Metcalf County Elementary School;

(k) Lewis County Middle School;

(l) Garrison Elementary School;

(m) Laurel Elementary School, and

(n) Tollesboro Elementary School.

(5) Coverage of a primary care telehealth service delivered by a hub site identified in subsection (3) of this section to a public school spoke site identified in subsection (4) of this section shall be billed using the following CPT codes for the following corresponding services:

(a) 99201 through 99205 for new patient office visits;

(b) 99211 through 99215 for established patient office visits; or

(c) 99241 through 99245 for consultation office visits.

(6) The department shall reimburse a primary care telehealth service provided to a public school spoke site at the same rate as a face-to-face consultation.

(7) Total aggregate reimbursement under the telehealth school-based program shall not exceed $100,000 per calendar year.

(8) The department shall not cover a consultation provided by a site not within the telehealth network pursuant to KRS 304.17A-138(1)(a).

Section 10.] Appeal Rights. (1) An appeal of a department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department determination regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) A provider may appeal a department-written determination[decision] as to the application of this administrative regulation in accordance with 907 KAR 1:671.

ELIZABETH A. JOHNSON, Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: March 31, 2009

FILED WITH LRC: April 2, 2009 at 1 p.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Department for Medicaid Services (DMS) provisions relating to telehealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS provisions relating to telehealth in accordance with KRS 194A.125 and KRS 205.559.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS telehealth provisions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing DMS telehealth provisions.

(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 expands the amount and type of care that can be provided via telehealth, expands the eligible telehealth provider types; establishes that policies are contingent upon the provision of federal financial participation to the department, and deletes the school-based telehealth provisions as they expired October 31, 2007. The amendment after comments authorizes reimbursement for telehealth by chiropractors, adds patient education regarding diabetes care planning to the telehealth consultation scope; labels telehealth as telehealth consultations in accordance with KRS 205.510(15), requires telehealth information to be forwarded within 30 days of the consultation as opposed to no time frame, refers to federal and state information storage and related requirements, and corrects a couple of incorrect current procedural terminology (CPT) codes.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to enhance recipient access to care as well as to enable DMS to enhance efficiency of care. DMS's coverage of telehealth prior to this was limited to the point that it did not encourage potential providers to invest in the required technology in order to provide telehealth. The department believes that expanded telehealth coverage, particularly among specialists, will result in recipients receiving accurate diagnoses and corresponding appropriate care sooner in some circumstances. For example, an individual with a dermatological condition in a rural area might repeatedly go to a general provider without being diagnosed accurately. If the individual can be evaluated by a dermatological specialists via telehealth, he or she, could be accurately diagnoses during one encounter. Consequently, emergency room utilization could decrease if individuals are accurately diagnosed, in some circumstances, sooner. Additionally, the enhanced availability of telehealth could potentially reduce transportation costs. The amendment establishing that provisions are effective

contingent upon the provision of federal financial participation is necessary to maintain the viability of the Medicaid program as the Centers for Medicare and Medicaid Services (CMS) provides approximately seventy (70) percent of DMS program funding. The amendment after comments conforms to expand telehealth options for recipients

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes - including KRS 194A.125, 194A.030(1) and KRS 205.559 - by enhancing recipient access to telehealth care and improving the health of Kentuckians including the delivery of "health services in a safe and effective fashion." The amendment after comments conforms to the content of the authorizing statutes by enhancing recipient telehealth options.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes - including KRS 194A.125, 194A.030(1) and KRS 205.559 - by enhancing recipient access to telehealth care and improving the health of Kentuckians including the delivery of "health services in a safe and effective fashion." The amendment after comments conforms to the content of the authorizing statutes by enhancing recipient telehealth options.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently forty-eight (48) telehealth sites in the Kentucky telehealth network located among thirty-one (31) counties The provider network is primarily comprised of hospitals/medical centers but also includes health departments and physicians' offices among others.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment expands telehealth options and does not require new actions of compliance from regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The amendment expands telehealth options and does not impose cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). DMS anticipates that recipients will have enhanced access to care (including specialty care such as dermatology) and that telehealth providers will have expanded opportunity to perform telehealth as a result of the amendment

(5) Provide an estimate of how much it will cost to implement this administrative regulation·

(a) Initially: DMS anticipates that the amendment will be cost effective but due to the minimal level of telehealth care utilized for the past several years, a precise fiscal projection is difficult to attempt. Variables to consider include the number of providers who choose to refer recipients to telehealth specialists as well as the number of recipients who choose to receive telehealth care. DMS thinks increased telehealth activity can reduce emergency room utilization or general practice/primary care center utilization as the use of specialists, via telehealth, would presumably result in quicker and more accurate diagnoses in some circumstances. Additionally, increased telehealth utilization may also decrease medical transportation costs.

(b) On a continuing basis: DMS anticipates that the amendment will be cost effective but due to the minimal level of telehealth care utilized for the past several years, a precise fiscal projection is difficult to attempt. Variables to consider include the number of providers who choose to refer recipients to telehealth specialists as well as the number of recipients who choose to receive telehealth care. DMS thinks increased telehealth activity can reduce emergency room utilization or general practice/primary care center utilization as the use of specialists, via telehealth, would presumably result in quicker and more accurate diagnoses in some circumstances. Additionally, increased telehealth utilization may also decrease medical transportation costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor 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: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? The administrative regulation does establish a different service limit for certain mental health telehealth in order to preserve consistency with the same care in a face-to-face setting. For example, physicians and ARNPs are limited to four (4) services with a psychiatry CPT code per recipient per year pursuant to 907 KAR 3.005 (Physicians' services). Therefore, this administrative regulation imposes the same limit - four (4) mental health care encounters per recipient per year - if provided by a physician or ARNP via telehealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.010, 194A.030(2), 194A.125, 205.520, 205 559

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for the Department for Medicaid Services (DMS); however, could generate revenue for three local health departments which are in the Kentucky telehealth network (if they provide telehealth covered via this administrative regulation)

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for the DMS; however, could generate revenue for three local health departments which are in the Kentucky telehealth network (if they provide telehealth covered via this administrative regulation.)

(c) How much will it cost to administer this program for the first year? DMS anticipates that the amendment will be cost effective but due to the minimal level of telehealth care utilized for the past several years, a precise fiscal projection is difficult to attempt. Variables to consider include the number of providers who choose to refer recipients to telehealth specialists as well as the number of recipients who choose to receive telehealth care. DMS thinks increased telehealth activity can reduce emergency room utilization or general practice/primary care center utilization as the use of specialists, via telehealth, would presumably result in quicker and more accurate diagnoses in some circumstances. Additionally, increased telehealth utilization may also decrease medical transportation costs.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the amendment will be cost effective but due to the minimal level of telehealth care utilized for the past several years, a precise fiscal projection is difficult to attempt. Variables to consider include the number of providers who choose to refer recipients to telehealth specialists as well as the

number of recipients who choose to receive telehealth care. DMS thinks increased telehealth activity can reduce emergency room utilization or general practice/primary care center utilization as the use of specialists, via telehealth, would presumably result in quicker and more accurate diagnoses in some circumstances. Additionally, increased telehealth utilization may also decrease medical transportation costs.

JUSTICE AND PUBLIC SAFETY CABINET
Office of Drug Control Policy
Kentucky Agency for Substance Abuse Policy
(Amendment)

10 KAR 7:010. Kentucky Agency for Substance Abuse Policy (KY-ASAP) Program and start-up funding.

RELATES TO: KRS 15A 340, 15A.342, 15A.344[~~12.330, 12.332, 12.334~~], 13B, 45A.005-45A.020, 45A.035-45A.045, 45A.050, 45A.075, 45A.130, 45A.145, 45A.210, 45A.230-45A.235, 45A.480, 45A.695-45A.705, 45A.725, 222.211, 248.723

STATUTORY AUTHORITY: KRS 15A 342(19)[~~12.332(19)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.342[~~12.332~~] requires the Kentucky Agency for Substance Abuse Policy (KY-ASAP) to promulgate administrative regulations to develop a statewide strategic plan to reduce the prevalence of tobacco use and drug and alcohol abuse among both the youth and adult populations in Kentucky. This administrative regulation establishes: the mechanism for the distribution of start-up funds for the implementation of the approved long-term community strategy; the incentives to encourage formation of multicounty advisory and coordination boards; the composition of a local board; and reporting requirements.

Section 1. Definitions. (1) "Initial fiscal agent" means an entity that shall have a permanent representative on a local board and a financial structure that currently receives funding from state or federal government.

(2) "Kentucky Agency for Substance Abuse Policy or "KY-ASAP" means the agency established at KRS 15A 340(1)[~~12 330(1)~~] to (3)

(3) "Local board" means that entity described at KRS 15A.344(1)[~~12.334(1)~~].

Section 2. General. (1) KY-ASAP shall develop proposal instructions with advice from the[~~following:~~

~~(a)~~] KY-ASAP Board [~~, and~~

~~(b) Cabinet for Health Services, Department for Mental Health and Mental Retardation Services~~]

(2) Instructions shall be contained in the Kentucky Agency for Substance Abuse Policy (KY-ASAP) Community Readiness Instrument, incorporated by reference.

(3) If a local board fails to comply with KRS 15A 344[~~12.334~~], the Executive Director of KY-ASAP shall notify the chairman of the local board by letter that the existing board may be abolished.

(4) An adverse action letter to a local board chairman shall comply with the notice requirements of KRS Chapter 13B.

Section 3. Local Board Membership. (1) A local board representing more than one (1) county shall insure that each county is represented on the local board when requesting appointment for local board members.

(2) Membership of a single county local board shall be no less than fifteen (15) and no more than twenty (20) members.

(3) Membership of a multicounty local board shall be no less than fifteen (15) and no more than thirty (30) members.

(4) Membership of a single county local board for a county with a population exceeding 250,000 shall be no less than fifteen (15) and no more than thirty (30).

(5) Each county of a multicounty local board shall have member representation.

(6) The permanent membership of a local board shall include the:

(a) County judge executive or designee;

(b) Executive director of a community mental health center or designee;

(c) Executive director of a health department or designee;

(d) Coordinator of a family resource or youth services center;

(e) Superintendent of a local school district or designee; and

(f) Service Region Administrator of the Cabinet for Families and Children, Department for Community Based Services or designee.

(7)[~~(6)~~] A nonpermanent board member shall be selected to fill remaining seats from the following areas:

(a) Business leaders,

(b) Religious leaders;

(c) Judicial system;

(d) Law enforcement;

(e) Media,

(f) Health care;

(g) Group with funds to provide alcohol, tobacco, and other drug prevention;

(h) Group with funds to provide alcohol, tobacco, and other drug treatment;

(i) Local leaders in the area of alcohol, tobacco, and drug prevention;

(j) Member of existing health or related strategic planning initiatives; and

(k) University or local college that serves the county.

(8)[~~(7)~~] Representatives appointed under any paragraph in this section, excluding subsection (6)[~~(5)~~](a) of this section, shall not comprise more than ten (10) percent of the total board membership.

(9)[~~(8)~~] Representation from health departments and community mental health centers shall be equivalent.

Section 4. Local Board Bylaws Requirement. (1) A local board shall include the following in written bylaws:

(a) Definition of officers and membership, and instructions for their selection;

(b) An organizational chart;

(c) Description of the responsibilities of officers;

(d) Description of procedures for decision making;

(e) Policy for officer rotation;

(f) Establishment of meeting times at a regular hour and date;

(g) Description of procedure for dispute resolution; and

(h) Requirements for:

1. Preparation of a written agenda for a meeting;

2. Provision of a standard orientation for new members;

3. Distribution of meeting minutes to members prior to meetings;

4. Selection of a fiscal agent that receives state or federal funding, excluding the initial fiscal agent specified in Section 7(1) of this administrative regulation; and

5. Selection of fiscal agent to provide necessary insurance coverage for KY-ASAP local board activities.

(2) If local board membership requirements of KRS 15 344[~~12 334~~] or Section 3(6)[~~2(5)~~] of this administrative regulation are not met, the KY-ASAP Executive Director shall send written notification to.

(a) The convening agency, prior to or following board designation; and

(b) The fiscal agent and the chairperson of the board made known to KY-ASAP by the board, following designation.

(3) A local board shall immediately notify KY-ASAP upon membership changes and shall include changes in membership in the semiannual report required by KRS 15 344(2)[~~12.334(2)~~]

Section 5. Application Process. (1) In order to approve start-up funding in accordance with Section 6 of this administrative regulation, a local board shall submit an application to KY-ASAP.

(2) If an applicant, during an initial submission period, includes a county also specified in another application, the applications duplicating counties shall be returned to the applicants for resolution.

(3) If application time frame does not allow for resolution of an overlapping county issue and this overlap remains in the final applications submitted, the applicants shall be issued a certified letter from KY-ASAP requesting the organizers to reapply during the next application cycle.

(4) The following process shall apply to an entity seeking to qualify as a local board:

(a) The applicant shall submit a letter of intent to begin the KY-

ASAP local board and strategic plan development process;

(b) KY-ASAP shall respond to a letter of intent within fifteen (15) calendar days of receipt;

(c) The applicant shall then submit a community readiness document according to instructions in the "Local Board Announcement", incorporated by reference.

(5) For an applicant accepted into the program, payment of the initial lump sum shall require completion of the following:

(a) An approved community needs and resource assessment of existing or proposed strategic plans that address alcohol, tobacco, and other drug abuse prevention or treatment,

(b) A system structure plan that details local board development and activities;

(c) A list of permanent local board members in accordance with Section 3 of this administrative regulation;

(d) A list of nonpermanent local board members in place at the time of application submission;

(e) If the local board encompasses more than one (1) county, a letter of support from the judge executive each county affected;

(f) If a local board includes a city of the first or second class, a letter of support from the city's mayor;

(g) A written notice sent from the executive director to the initial fiscal agent:

1. Indicating approval, and

2. Including a letter of intent to contract, in compliance with applicable sections of KRS Chapter 45A;

(h) The contract shall specify:

1. Obligations of the parties;

2. Services to be provided;

3. Requirement for fund repayment;

4. Result of failure to meet contract provisions; and

5. Signature of the initial fiscal agent.

(6) Final lump sum payment shall be made following a fiscal review of the local board pertaining to:

(a) Fiscal review of the local board's use of initial start-up funding;

(b) Implementation of the long term community strategic plan; and

(c) Local board activity, including election of chairman and completion of appointment of board members.

Section 6. Start-Up Funding. (1) In order to insure funding is received by local boards without unnecessary delay, KY-ASAP shall pay start-up funding in two (2) lump sum payments.

(2) Lump sum payments shall be used to develop and implement the long-term community strategy.

(3) No more than fifty (50)[~~fifteen (15)~~] percent of the total start-up funds shall be used prior to the KY-ASAP executive director's approval of the long-term community strategic plan.

(4) An initial lump sum payment may be made when at least one (1) more than half of the membership has been appointed to the board, if all other conditions are met.

Section 7. Start-Up Funding Payment. (1) The initial fiscal agent, upon receipt of notice of local board designation, shall submit a letter of agreement to KY-ASAP to serve as permanent fiscal agent.

(2) KY-ASAP shall award payments to a designated local board through that board's selected fiscal agent, to the extent funds are available, as follows:

(a) $50,000 for a single county with a local board;

(b) An incentive of $110,000 for a single local board that coordinates a two (2) county local board;

(c) An incentive of $175,000 for a single local board that coordinates three (3) or more counties; or

(d) $200,000 for single local board that coordinates a multi-county area with a combined population of 250,000 or greater.

Section 8. Local Board Reporting. (1) A local board shall report semiannually to KY-ASAP in accordance with KRS 15.344(2)[~~12.334(2)~~] on the following dates:

(a) January 15[~~March 1~~]; and

(b) July 15[~~September 1~~].

(2) KY-ASAP shall forward a copy of each report to the KY-ASAP Board.

(3) A copy of each semiannual report shall be included in the KY-ASAP Annual Report to the Legislative Research Center and the Governor, as required by KRS 15.342(20)[~~12.332(20)~~].

Section 9. Incorporation by Reference. (1) The [~~following material is incorporated by reference: (a)~~] "Kentucky Agency for Substance Abuse Policy (KY-ASAP) Community Readiness Instrument, 2001", is incorporated by reference[~~; and~~

~~(b) "KY-ASAP Local Board Announcement, 2001"~~].

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Agency for Substance Abuse Policy Office, 125 Holmes Street[~~859 East Main Street, Suite 7A~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

VAN INGRAM, Acting Executive Director

APPROVED BY AGENCY: April 10, 2009

FILED WITH LRC: April 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this proposed administrative regulation shall be held on May 26, 2009 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing 5 working days prior to the hearing or send written comments on the proposed administrative regulation by close of business June 1, 2009 to: Leigh K. Meredith, Staff Attorney, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-8234, fax (502) 564-6686.

CONTACT PERSON: Leigh K. Meredith, Staff Attorney, Justice & Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-8234, fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. Leigh Meredith

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation governs the Kentucky Agency for Substance Abuse Policy (KY-ASAP) Program through oversight by the Office of Drug Control Policy. The regulation establishes the requirements on proposals for the creation of a KY-ASAP local board, the composition of local KY-ASAP board membership and bylaws, the procedures for submitting funding applications, and the funding reporting requirements for local KY-ASAP boards.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.340, 15A.342, and 15A.344, effective June 26, 2007.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 15A.342, this regulation governs the operations of the KY-ASAP, through oversight by the Office of Drug Control Policy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides direction and information to the Office of Drug Control Policy, its employees, and the general public concerning the duties, responsibilities and processes of local KY-ASAP boards.

(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 KY-ASAP Program's current practices and reflects the statutory authority citations for

this administrative regulation found in KRS 15A.340, 15A.342, and 15A.344, effective June 26, 2007. The statutory authority for Kentucky ASAP boards was previously set forth in KRS 12 330, 12.332, and 12.334.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.340, 15A.342, and 15A.344, effective June 26, 2007.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15A.340, 15A.342, and 15A.344 authorize the KY-ASAP Program, through the Office of Drug Control Policy, to ensure the efficient operation of local KY-ASAP boards.

(d) How the amendment will assist in the effective administration of the statutes This amendment provides information to local Kentucky ASAP boards and the general public regarding proposals for the creation of local boards, the composition of local KY-ASAP board membership, requirements for local board bylaws, the submission process for funding applications, and reporting requirements of the local KY-ASAP boards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all 120 Kentucky county governments through their local KY-ASAP boards Additionally, the regulation indirectly affects health departments, local school boards, fiscal courts, regional prevention centers, and other entities serving as fiscal agents for the local KY-ASAP boards. The regulation indirectly affects local community businesses, school systems, health departments, and other community entities by allowing local KY-ASAP boards to provide funding to these entities to carry out alcohol, tobacco, and other drug prevention, treatment, and enforcement programs in the community.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Local KY-ASAP local boards and their fiscal agents will follow the policies and procedures relating to KY-ASAP board membership changes, bylaw requirements, ongoing funding applications, and reporting deadlines.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments relating to the operation of local KY-ASAP boards will assist in the effective administration of local boards, including proper composition of local ASAP board membership, the approval of applications for ongoing board funding, and completion of reporting deadlines.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The KY-ASAP local boards are already administered by the Office of Drug Control Policy. There should not be any costs to implement this administrative regulation.

(b) On a continuing basis: Local KY-ASAP boards are already administered through the Office of Drug Control Policy. There should not be any costs to implement this administrative regulation

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Tobacco Settlement Agreement 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 Office of Drug Control Policy does not anticipate any additional funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State Government: Office of Drug Control Policy, and Local Government: KY-ASAP boards and local government entities serving as the fiscal agent for each local ASAP board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.340, 15A.342, 15A.344.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? This program has been funded through the Tobacco Settlement Agreement Program for several years, and no new programs are created.

(d) How much will it cost to administer this program for subsequent years? This program has been funded through the Tobacco Settlement Agreement Program for several years, and additional funding should not be required to support these amendments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-) The Office of Drug Control Policy, Kentucky Agency for Substance Abuse Policy, distributes its allocation of Tobacco Settlement Agreement funds down to local boards through a request for proposal (RFP) process. Each local board, (currently 75 local boards representing 113 counties exist) after ascertaining its communities' needs and resources as they relate to alcohol, tobacco, and other drug issues; submits a proposal for funding to address those issues. Factors used in determination of local board funding consist of compliance issues, conformity to applicable Kentucky Revised Statutes and Kentucky Administrative Regulations, the spending proposal as it relates to the local board's strategic plan, the spending proposal as it relates to the mission of KY-ASAP, the performance of the local board, and the fiscal responsibility of funds that have been allocated previously to the local board. The amount of the funding award will in part be based on how well the local board has documented their need and how this award will address the board's need.

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Office of Drug Control Policy
(Amendment)

10 KAR 7:020. Kentucky Agency for Substance Abuse Policy on-going funding.

RELATES TO: KRS 15A 340, 15A.342, 15A.344[~~12 330-12 334~~], 13B, 45A.005-45A.020, 45A.035-45A.050, 45A.075, 45A.130, 45A.145, 45A.210, 45A.230, 45A.235, 45A.480, 45A.695-45A.705, 45A 725, 222.211, 248.723

STATUTORY AUTHORITY: KRS 15A 342(19)[~~12.332(19)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A 342[~~12 332~~] requires the Kentucky Agency for Substance Abuse Policy (KY-ASAP) to promulgate administrative regulations to sustain a statewide strategic plan to reduce the prevalence of tobacco use and drug and alcohol abuse with both the youth and adult populations in Kentucky. This administrative regulation estab-

lishes standards to maintain designated KY-ASAP local boards and the mechanism for distribution of designated funds for the continued implementation of the approved long-term community strategy.

Section 1. Definitions. (1) "Good standing" means compliance with applicable statutes, administrative regulations, and contracts, and shall be determined by KY-ASAP with advice from the Office of Drug Control Policy[~~Cabinet for Health Services, Department for Mental Health and Mental Retardation Services, Division of Substance Abuse~~].

(2) "Kentucky Agency for Substance Abuse Policy" or "KY-ASAP" means the agency established at KRS 15A.340(1)[~~12.330(1)~~] to (3).

(3) "Local board" means that entity described at KRS 15A 344(1)[~~12.334(1)~~]

(4) "Ongoing funds" means dollars distributed from KY-ASAP for the purpose of supporting the strategic plans of local boards in good standing.

(5) "Good standing" means those local boards found in compliance with all appropriate administrative regulations, contracts, and other requirements as specified by KY-ASAP and such as determination shall be made by KY-ASAP with the advice from the Office of Drug Control Policy[~~Cabinet for Health Services, Department for Mental Health and Mental Retardation Services, Division of Substance Abuse~~].

Section 2. Proposals from Local Boards for Ongoing Funding. KY-ASAP shall, contingent upon available funds:

(1) Review[~~Develop~~] instructions for local boards to follow for submission of proposals for ongoing funding;

(2) Review and modify as needed[~~Develop, by October 15, 2003~~], a standard form for submission of a request for proposal; and

(3) Consult with KY-ASAP State Board[~~the following entities~~] for general guidance in the distribution of ongoing funds[~~:~~

~~(a) The KY-ASAP Board, and~~

~~(b) The Cabinet for Health Services:~~

~~1. Department for Mental Health and Mental Retardation Services, Division of Substance Abuse; and~~

~~2. Department for Public Health~~]

Section 3. Local Board Reports. Each local board shall include the following information in the semiannual report required by KRS 15A 344(2)[~~12.334(2)~~] and detailed in 10 KAR 7.010, Section 8:

(1) Information regarding the effectiveness, efficiency, and efforts of the program, as required by KRS 15A 344(2)[~~12.334(2)~~];

(2) Detail of expenditures made during the reporting period;

(3) Detail of strategic plan implementation; and

(4) Recommendations for increased or decreased funding; as required by KRS 15A 344(2)[~~12.334(2)~~].

(5) If a local board fails to submit the required reports:

(a) The Executive Director of KY-ASAP shall notify the local board's fiscal agent and chair, by certified letter, of the noncompliance, stating the reasons therefore;

(b) The local board may, within forty-five (45) days of the date of notice, submit a plan of corrective action to the executive director;

(c) The executive director shall, within thirty (30) days of receipt of a plan of corrective action, respond, in writing; and

(d) If the executive director determines that the proposed plan fails to meet the requirements of this administrative regulation, the executive director shall:

1. Present to the KY-ASAP State Board at its next scheduled meeting, the finding of noncompliance and the reasons therefore, accompanied by documentation supporting the decision; and

2. Take action to abolish the local board.

(e) A local board found in noncompliance, and whose proposed corrective plan is rejected, shall return or reimburse KY-ASAP the amount of funds received during the period of noncompliance, in accordance with the contract executed between the fiscal agent of the local board and the Justice and Public Safety Cabinet, Office of Drug Control Policy, Kentucky Agency for Substance Abuse Policy[~~Cabinet for Health Services, Department for Mental Health and Mental Retardation, Division of Substance Abuse, on behalf of KY-ASAP~~].

(f) A local board aggrieved by a finding of noncompliance may appeal pursuant to KRS Chapter 13B.

Section 4. Application Process. (1) A local board seeking funds for ongoing services shall:

(a) In response to an RFP issued by KY-ASAP, submit an application, incorporated by reference, to the KY-ASAP; and

(b) Be in good standing at the time of application.

(2) If the KY-ASAP approves the application:

(a) The KY-ASAP shall notify the fiscal agent and the chair of the qualifying local board; and

(b) The fiscal agent shall submit to KY-ASAP a letter of agreement to serve as fiscal agent; and

(c) KY-ASAP and the fiscal agent of the local board shall execute a contract in compliance with applicable sections of KRS Chapter 45A, to the extent funds are available.

(3) A single contract with a local board shall not exceed the sum of $200,000.

VAN INGRAM, Acting Executive Director

APPROVED BY AGENCY: April 10, 2009

FILED WITH LRC: April 15, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 26, 2009 at 10 a.m. at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing 5 working days prior to the hearing or send written comments on the proposed administrative regulation by close of business June 1, 2009 to: Leigh K. Meredith, Staff Attorney, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601, phone (502) 564-8234, fax (502) 564-6686.

CONTACT PERSON: Leigh K. Meredith, Staff Attorney, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Second Floor, Frankfort, Kentucky 40601, Phone (502) 564-8234, Fax (502) 564-6686.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leigh Meredith

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the requirements on proposals for ongoing funding for the Kentucky Agency for Substance Abuse Policy (KY-ASAP) local boards and sets forth reporting requirements and the application process for ongoing funding of local KY-ASAP boards.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 15A.340, 15A.342, and 15A.344.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation governs the application process, ongoing funding procedures, and reporting requirements of the KY-ASAP Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides information to the Office of Drug Control Policy and local KY-ASAP boards relating to the procedures for ongoing funding proposals, establishes reporting requirements, and provides the application process for local KY-ASAP boards.

(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 KY-ASAP's statutory authority citations and the local KY-ASAP board reporting deadlines to conform to the state fiscal year.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 15A.340, 15A.342, and 15A.344.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment will permit the KY-ASAP to amend practices or procedures to ensure the efficient operation of local KY-ASAP boards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides information concerning the appropriate statutory citations and the funding reporting requirements for local KY-ASAP boards according to the state fiscal year.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all 120 Kentucky counties through their local KY-ASAP boards. Additionally, the regulation indirectly affects health departments, local school boards, fiscal courts, regional prevention centers, and other entities serving as fiscal agent for the local KY-ASAP boards. Likewise, the regulation indirectly affects local community businesses, school systems, health departments, and other community entities by allowing local KY-ASAP boards to provide ongoing funding to these entities to carryout alcohol, tobacco, and other drug prevention, treatment, and enforcement programs in the community.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Local KY-ASAP boards will have to follow the changes in the policies and procedures relating to reporting requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Changes in this regulation are not expected to increase costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective administration of local KY-ASAP boards' processes.

(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 funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Tobacco Settlement Agreement 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: No increase in funding to the Office of Drug Control Policy is necessary.

(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 or directly or indirectly increase any fees

(9) TIERING: Is tiering applied? No, tiering is not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State Government: Office of Drug Control Policy; Local Government: KY-ASAP boards and local government entities serving as the fiscal agent for each local ASAP board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.340, 15A.342, and 15A.344.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? This program has been funded through the Tobacco Settlement Agreement Program for several years, and no new programs are created.

(d) How much will it cost to administer this program for subsequent years? This program has been funded through the Tobacco Settlement Agreement Program for several years, and additional funding should not be required to support these amendments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): The Office of Drug Control Policy, Kentucky Agency for Substance Abuse Policy, distributes its allocation of Tobacco Settlement Agreement funds down to local boards through a request for proposal (RFP) process. Each local board (currently 75 local boards representing 113 counties exist), after ascertaining its communities' needs and resources as they relate to alcohol, tobacco, and other drug issues; submits a proposal for funding to address those issues. Factors used in determination of local board funding consist of compliance issues, conformity to applicable Kentucky Revised Statutes and Kentucky Administrative Regulations, the spending proposal as it relates to the local board's strategic plan, the local board's spending proposal as it relates to the mission of KY-ASAP, performance of the local board, and the fiscal responsibility of funds that have been allocated previously to the local board. The amount of the funding award will in part be based on how well the local board has documented their need and how this award addresses the board's need.

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Amendment)

103 KAR 3:010. General Administrative Forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), (10), 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 131.340, 131.500, 131.500(1), (2), (3), (10), 131.510(1), (2)(a), 131.540, 132 020, 132 043, 132.060-132 090, 132.130-132.180, 132.190, 132.200, 132.215, 132.216, 132.220-132.270, 132.290, 132.310, 132 320, 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.020, 134.390, 134.420, 134.430, 134.440, 134.500, 134.580(4), 134.590, 134.800, 134.805, 134.810, 134.815, 134 820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.030, 136.040, 136 050, 136.070, 136.071, 136.0704, 136.090, 136.100, 136.115-136.180, 136.181-136.187, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136 575, 136.600-136.660, 137.130, 137.160, 139.550, 139.560, 142.010, 142 050, 142.321, 142.327, 142.357, 143.030(1), 143.037, 143 040, 143 050, 143.060(1), 143.085, 143.990, 143A.010, 143A 030, 143A.035, 143A.037, 143A.080, 143A 090, 143A.100(1), 143A.991, 144.120(4), 154.22-050, 154.22-060, 154.22-070, 154 23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, 154.45-090, 154.45-100, 154.45-110(1), 155.170, 160.613-160.617, 209.160, 224.01-310(1), 224.60, 234.321, 234.370, 243.710, 243.720, 243.730, 243 850, 243 884,

248.756(2), 299.530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395.470(3), 413.120.

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

Section 1. Administrative - Required Forms. (1) Revenue Form 10A001, "Request to Inspect Public Records", shall be completed by the public to request access to public records specified on the form.

(2) Revenue Form 10A020, "Waiver of Appeal Rights", shall be completed by a taxpayer to reopen an audit that has become final if the taxpayer has failed to timely file a protest with the Department of Revenue.

(3) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", shall be completed by taxpayers to authorize the Department of Revenue to move funds by electronic means from taxpayer accounts to the Department of Revenue as payment for taxes.

(4) Revenue Form 10A071, "EFT Bank Change", shall be completed by taxpayers who are registered as EFT ACH Debit filers to notify the department of a bank account change.

(5) Revenue Form 10A100, "Kentucky Tax Registration Application", shall be used by taxpayers to voluntarily apply for tax registration of the following taxes

(a) Employer's Kentucky withholding;
(b) Corporation income;
(c) Sales and use;
(d) Consumer's use;
(e) Motor vehicle tire fee;
(f) Transient room; [~~and~~]
(g) Limited liability entity; and
(h) Coal severance and processing.

(6)[~~(5)~~] Revenue Form 10A100-CS, "Kentucky Tax Registration Application", shall be sent by the department's registration compliance section to taxpayers for the taxpayers to use to apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;
(b) Corporation income,
(c) Sales and use;
(d) Consumer's use;
(e) Motor vehicle tire fee;
(f) Transient room; [~~and~~]
(g) Limited liability entity; and
(h) Coal severance and processing. [~~(6) Revenue Form 10A100-FI, "Kentucky Tax Registration Application", is an online, fill-in form which shall be used by taxpayers to voluntarily apply for tax registration of the following taxes:~~

~~(a) Employer's Kentucky withholding,~~
~~(b) Corporation income;~~
~~(c) Sales and use,~~
~~(d) Consumer's use,~~
~~(e) Motor vehicle tire fee; and~~
~~(f) Transient room; and~~
~~(g) Limited liability entity~~]

(7) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application", shall provide instructions for the proper completion of Revenue Form[~~Forms~~] 10A100 [~~or 10A100-FI~~], "Kentucky Tax Registration Application", which is[~~are~~] used to apply for employer's Kentucky withholding, corporation income, sales and use [~~taxes~~], consumer's use, motor vehicle tire fee, transient room, [~~and~~] limited liability entity, and coal severance and processing tax accounts.

(8) Revenue Form 10A100-CS(I), "Instructions for Kentucky Tax Registration Application", shall provide instructions for the proper completion of Revenue Form 10A100-CS, "Kentucky Tax Registration Application", which is used to apply for employer's Kentucky withholding, corporation income, sales and use [~~taxes~~], consumer's use, motor vehicle tire fee, transient room, [~~and~~] limited liability entity, and coal severance and processing tax accounts.

(9) Revenue Form 10A170, "Request for Notification of Administrative Regulation Filing" shall be used by individuals to request receipt of copies of ordinary administrative regulations filed with the Legislative Research Commission by the Department of Revenue.

(10) Revenue Form 10F100, "Your Rights As a Kentucky Taxpayer", shall provide the public with information describing taxpayer rights provided by KRS Chapters 131, 133 and 134.

(11) Revenue Form 12A012, "Receipt of Seized Property", shall be presented for execution to the taxpayer receiving returned property from the Kentucky Department of Revenue that was previously seized for failure to pay taxes in order to establish documentation that the property was returned to the taxpayer.

(12) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement", shall be presented for execution to persons requesting to settle their tax liabilities for less than the delinquent tax liability based upon doubt as to collectibility or doubt as to liability.

(13) Revenue Form 12A104, "Notice of Seizure", shall be presented to the owner or officer of the entity from which the Kentucky Department of Revenue is seizing property for failure to pay taxes owed to the Commonwealth.

(14) Revenue Form 12A107, "Notice of Sale", shall be presented to the owner of seized property, the newspaper with the highest circulation for that area, and posted at the courthouse, at three (3) other public places within the county, and where the seizure was made, for the purpose of notifying the property owner, and advertising to the public the sale of the seized property.

(15) Revenue Form 12A109-1, "Release of Bank Levy", shall be presented to the bank on which the levy was served for the purpose of releasing the seized property.

(16) Revenue Form 12A109-2, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property.

(17) Revenue Form 12A109-3, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property related to child support.

(18) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy.

(19) Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy related to child support.

(20) Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", shall be presented to anyone who makes a proper application for a lien release on a specific piece of property if the Department of Revenue's lien attaches no equity or if the equity that the lien encumbers is paid to the Department of Revenue.

(21) Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", shall be presented to anyone who makes proper application requesting that the Department of Revenue subordinate its lien position to a new mortgage and demonstrates that the subordination is in the Commonwealth's best interest.

(22) Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", shall be presented to anyone who requests to have the Department of Revenue subordinate its lien position to a new mortgage.

(23) Revenue Form 12A503, "Application for Specific Lien Release", shall be presented to anyone who requests that the Department of Tax release its tax lien so that a specific piece of property can be sold.

(24) Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the Commonwealth.

(25) Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager ", shall be presented to the corporate officers or LLC managers for the purpose of entering into a payment agreement to pay the trust taxes owed to the Commonwealth, and the terms of the payment agreement shall extend past the statutory period for assessing responsible corporate officers or LLC managers.

(26) Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", shall be presented to the taxpayer for the purpose of extending the period in which the liability can be collected.

(27) Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy On Wages, Salary, and Other Income", shall be presented to employers with a wage levy on an employee for the purpose of calculating the dollar amount of wages due to the employee.

(28) Revenue Form 12A508-1, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for trust taxes owed to the Commonwealth.

(29) Revenue Form 12A508-2, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(30) Revenue Form 12A508-3, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for trust taxes owed to the Commonwealth.

(31) Revenue Form 12A508-4, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(32) [~~Revenue Form 12A513, "Corporation and Pass Through Entity Nexus Questionnaire", shall be presented to companies who are unsure if they have a Kentucky tax presence for the purpose of establishing nexus with the state.~~

~~(33)~~] Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", shall be presented to an officer of a corporation for the purpose of resolving responsibility of the trust taxes owed to the Commonwealth.

(33)[~~(34)~~] Revenue Form 12A517, "Notice of [~~State Tax~~] Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(34) Revenue Form 12A517-1, "Notice of Child Support Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(35) Revenue Form 12A518, "Certificate of Release of Tax Lien", shall be presented to the county clerk and to the taxpayer against whom the tax lien is filed for the purpose of releasing the lien and notifying the taxpayer of the release.

(36) Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", shall be presented to the county clerk and to the taxpayer against whom the child support lien is filed for the purpose of releasing the lien and notifying the obligor of the release.

(37) Revenue Form 12A638, "Statement of Financial Condition for Individuals", shall be presented to individuals requesting to make payments or settle their tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(38) Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", shall provide instructions for completing Revenue Form 12A638.

(39) Revenue Form 12A639, "Statement of Financial Condition for Businesses", shall be presented to business owners requesting to make payments or settle a tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(40) Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", shall provide instructions for completing Revenue Form 12A639.

(41) Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes taxes to the Kentucky Department of Revenue.

(42) Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes child support.

(43) Revenue Form 12B020, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of taxpayers who owe taxes to the Kentucky Department of Revenue.

(44) Revenue Form 12B020-2, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of obligors who owe child support.

(45) Revenue Form 21A020, "Request for Copy of Tax Refund Check", shall be completed and submitted to the Department of Revenue in order to obtain a copy of a cashed refund check.

(46) Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(47) Revenue Form 31A001, "Vendor Contact Authorization", shall be used by a Department of Revenue representative to obtain permission from a taxpayer to contact his vendors concerning the issuance of exemption certificates.

(48) Revenue Form 31A004, "Auditor Record of Money Receipt Issued", shall be used by [~~the taxpayer and~~] the auditor to acknowledge payment from taxpayers of taxes determined to be tentatively due at the time of an audit.

(49) Revenue Form 31A011, "Taxpayer Data Questionnaire", shall be used by auditors to gather information regarding taxpayers capability to provide electronic data as requested under KRS 131.240.

(50) Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Ohio and Indiana.

(51)[~~(50)~~] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia and West Virginia.

(52)[~~(51)~~] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", shall be used by Department of Revenue representatives to obtain permission from a taxpayer to release tax returns.

(53) Revenue Form 31A050, "Electronic Transmittal Authorization", shall be used by auditors to seek permission from a taxpayer to transmit audit results electronically.

(54) Revenue Form 31A115, "Agreement Fixing Test Periods", shall be used by auditors to establish certain test periods when conducting and audit.

(55)[~~(52)~~] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain sales, use or severance tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(56) Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax", shall be used by auditors to establish taxable periods to be held open for audit and date of assessment.

(57)[~~(53)~~] Revenue Form 31A685, "Authorization to Examine Bank Records", shall be used by the Department of Revenue to obtain permission from a taxpayer to examine records in connection with transactions at the taxpayer's bank.

(58)[~~(54)~~] Revenue Form 31A725, "Statute of Limitations Agreement", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain income tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(59) Revenue Form 31F006, "Southeastern States Information Exchange Program", shall be used to provide information to taxpayers concerning the information exchange program between the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia, and West Virginia.

(60)[~~(55)~~] Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program Brochure", shall be used as instructions for taxpayers who submit tax records in an electronic format.

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

(a) Revenue Form 10A001, "Request to Inspect Public Records", February 1997;

(b) Revenue Form 10A020, "Waiver of Appeal Rights", January 2001;

(c) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", January 2008;

(d) Revenue Form 10A071, "EFT Bank Change", January 2008;

(e) Revenue Form 10A100, "Kentucky Tax Registration Application", June 2008[~~March, 2007~~];

(f)[~~(e)~~] Revenue Form 10A100-CS, "Kentucky Tax Registration Application", June 2008[~~March, 2007~~], [~~(f) Revenue Form 10A100-FI, "Kentucky Tax Registration Application", March, 2007,~~]

(g) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application", June 2008[~~March, 2007~~];

(h) Revenue Form 10A100-CS(I), "Instructions for Kentucky Tax Registration Application", June 2008[~~March, 2007~~];

(i) Revenue Form 10A170, "Request for Notification of Administrative Regulation Filing", August 2003;

(j) Revenue Form 10F100, "Your Rights as a Kentucky Taxpayer", September 2008[~~December, 2007~~];

(k) Revenue Form 12A012, "Receipt of Seized Property", November 2006;

(l) Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement", August 2004;

(m) Revenue Form 12A104, "Notice of Seizure", October 1982,

(n) Revenue Form 12A107, "Notice of Sale", January 2000;

(o) Revenue Form 12A109-1, "Release of Bank Levy", September 2004,

(p) Revenue Form 12A109-2, "Release of Levy", January 2000;

(q) Revenue Form 12A109-3, "Release of Levy", January 2008;

(r) Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", September 2004,

(s) Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", January 2008;

(t) Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", June 2006;

(u) Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", June 2006;

(v) Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", October 2006,

(w) Revenue Form 12A503, "Application for Specific Lien Release", October 2006;

(x) Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", June 2003;

(y) Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager", June 2003;

(z) Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", June 2003,

(aa) Revenue Form 12A507, "Table for Figuring the Amount Exempt from Levy on Wages, Salary, and Other Income", November 2006;

(bb) Revenue Form 12A508-1, "Notice of Tax Due", January 2008;

(cc) Revenue Form 12A508-2, "Notice of Tax Due", January 2008;

(dd) Revenue Form 12A508-3, "Notice of Tax Due", November 2008[~~January, 2008~~],

(ee) Revenue Form 12A508-4, "Notice of Tax Due", November 2008[~~January, 2008~~],

(ff) [~~Revenue Form 12A513, "Corporation and Pass-Through Entity Nexus Questionnaire", April, 2008;~~

~~(gg)~~] Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", August, 1996,

(gg)[~~(hh)~~] Revenue Form 12A517, "Notice of [~~State Tax~~] Lien", November 2008[~~October, 2004~~];

(hh) Revenue Form 12A517-1, "Notice of Child Support Lien", November 2008;

(ii) Revenue Form 12A518, "Certificate of Release of [~~Tax~~] Lien", November 2008[~~January, 2008~~];

(jj) Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", January 2008;

(kk) Revenue Form 12A638, "Statement of Financial Condition for Individuals", July 2004,

(ll) Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", August 2004,

(mm) Revenue Form 12A639, "Statement of Financial Condition for Businesses", August 2004;

(nn) Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", August 2004;

(oo) Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", September 2004;

(pp) Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", January 2008;

(qq) Revenue Form 12B020, "Notice of Levy", September 2004;

(rr) Revenue Form 12B020-2, "Notice of Levy", January 2008;

(ss) Revenue Form 21A020, "Request for Copy of Tax Refund Check", October 2006,

(tt) Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2006;

(uu) Revenue Form 31A001, "Vendor Contact Authorization", July 2006;

(vv) Revenue Form 31A004, "Auditor Record of Money Receipt Issued", July 2006;

(ww) Revenue Form 31A011, "Taxpayer Data Questionnaire", October 2008;

(xx) Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", July 2006;

(yy)[~~(xx)~~] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", July 2006;

(zz)[~~(yy)~~] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", July 2006;

(aaa) Revenue Form 31A050, "Electronic Transmittal Authorization", April 2008;

(bbb) Revenue Form 31A115, "Agreement Fixing Test Periods", April 2008;

(ccc)[~~(zz)~~] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", July 2006;

(ddd) Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax", May 2008;

(eee)[~~(aaa)~~] Revenue Form 31A685, "Authorization to Examine Bank Records", May 1985;

(fff)[~~(bbb)~~] Revenue Form 31A725, "Statute of Limitations Agreement", July 2006;

(ggg) Revenue Form 31F006, "Southeastern State Information Exchange Program", February 2005; and

(hhh)[~~(ccc)~~] Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program Brochure", June 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY. April 2, 2009

FILED WITH LRC: April 6, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on May 26, 2009, from 8 to 10 a.m., in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This 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 June 1, 2009. 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: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky, 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DeVon Hankins

(1) Provide a brief summary of.

(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of Revenue to meet the requirements of KRS Chapter 13A 110, which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required revenue forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

(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 corrects the existing regulation to add new or update existing Department of Revenue forms.

(b) The necessity of the amendment to this administrative regulation: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. Any addition of new forms or a change to existing forms must result in an amendment of the associated regulation to keep it current.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe tax forms necessary for the administration of the tax laws.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide taxpayers with the current version of the forms listed herein.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of all forms administered by the Department of Revenue in an administrative regulation. Local government will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No actions will have to be taken by the taxpayers or local governments to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There would be no cost incurred by the taxpayer or local government.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Access to current forms and instructions will enable taxpayers to comply with tax laws.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The Department of Revenue will not incur additional costs as the result of this regulation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation apply to every taxpayer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Revenue will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(3).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional expenditures or revenue for the Commonwealth or local government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation

Revenues (+/-).

Expenditures (+/-):

Other Explanation.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Amendment)

105 KAR 1:130. Hazardous duty coverage.

RELATES TO: KRS 61.592, 78.530, 78.545(31)

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(g) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to

16 652, 61 510 to 61 705, and 78.510 to 78 852. KRS 61 592(2) requires the board to promulgate administrative regulations prescribing the manner in which an employer shall request hazardous duty coverage for employees. This administrative regulation establishes the procedures and forms for requesting hazardous position coverage. [~~The statute allows agencies participating in the Kentucky Retirement Systems to request hazardous position coverage for employees. This administrative regulation sets out the procedures and forms for requesting hazardous position coverage.~~]

Section 1. Definitions (1) "Department" is defined by KRS 61.510(3).

(2) "County" is defined by KRS 78 510(3).

Section 2 If a county eligible to participate in the County Employees Retirement System chooses to provide hazardous duty coverage to all eligible employees, the county shall adopt an appropriate order to pay the required contributions and provide hazardous coverage to all eligible employees. Notwithstanding the three (3) month trial period set out in [~~Section 2 of~~] 105 KAR 1:120, Section 2, the county's request for participation in County Employees Retirement System [~~CERS~~] shall be submitted to the Board of Trustees at the first quarterly meeting which occurs at least one (1) month after the adoption of the appropriate order. The effective date of hazardous position coverage in the order shall be the date of the county's participation in County Employees Retirement System.

Section 3. (1)[~~2.~~] A [~~county participating in the County Employees Retirement System or a~~] department participating in the Kentucky Employees Retirement System may provide hazardous position coverage upon authorization by the governing authority. The governing authority shall make the request for hazardous position coverage in writing to the Board of Trustees of Kentucky Retirement Systems If the position is approved,[~~.~~] the effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the board of trustees which occurs after the date of the request.

(2) A county participating in County Employees Retirement System may provide hazardous position coverage upon adoption of a resolution by its governing authority to transfer eligible positions from nonhazardous to hazardous position coverage The governing authority shall make a written request for hazardous position coverage to the Board of Trustees of Kentucky Retirement Systems If the position is approved for hazardous coverage, the effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the Board of Trustees of Kentucky Retirement Systems in which the hazardous position coverage is approved unless a different date is approved by the Board of Trustees of Kentucky Retirement Systems

(a)1. Employees who began participating in County Employees Retirement System prior to September 1, 2008 and were working in hazardous covered positions in County Employees Retirement System prior to September 1, 2008, shall continue to participate as hazardous covered employees as long as they remain in a position that has been approved for hazardous coverage

2. Employees who began participating in County Employees Retirement System prior to September 1, 2008 and are subsequently employed in hazardous covered positions, shall participate as hazardous covered employees as long as they remain in a position that has been approved for hazardous coverage.

(b) Employees who begin participating in County Employees Retirement System on or after September 1, 2008 in a position that was approved for hazardous coverage prior to September 1, 2008, shall not be reported as hazardous covered employees until the county requests that the Board of Trustees of Kentucky Retirement Systems approve hazardous coverage for those positions that meet the criteria as set out in KRS 61 592(1)(b), and hazardous coverage is approved by the Board of Trustees of Kentucky Retirement Systems for those positions, even if the position has previously been approved for hazardous coverage

Section 4. (1) [~~3.~~] The [~~county or~~] department shall complete and submit the Form 7013, HP-1, Hazardous Participation Certification (KERS) [~~dated July 1991, incorporated by reference~~]. The form shall be signed by the head of the [~~county or~~] department and by an individual who can attest that sufficient funds have been budgeted for the employer contributions. For departments of the Commonwealth of Kentucky, the department shall also submit a letter from the Governor's Office of Policy and Management verifying sufficient funds have been budgeted for employer contributions.

(2) The county shall complete and submit the "Form 7011, HP-1, Hazardous Participation Certification (CERS)". The form shall be signed by the agency head and by an individual who can attest that sufficient funds have been budgeted for the employer contributions

Section 5 [~~4.~~] The county or department shall submit a description of the duties of each position for which hazardous coverage is requested.

(1) The agency shall complete Sections 1 and 3 of Form 7025, Position Questionnaire, for employees of a department and for employees of a county whose participation date was prior to September 1, 2008.

(2) The agency shall complete Sections 2 and 3 of Form 7025, Position Questionnaire, for employees of a county whose participation date was on or after September 1, 2008.

Section 6 [~~5.~~] The county or department shall complete and submit a Form 2011 HP-2, Hazardous Position Certification [~~dated July 1991~~] provided by the retirement system for each employee in a position for which the coverage has been requested. If there is any change in the employee's work assignment or classification, the county or department shall submit a new Form 2011, HP-2, Hazardous Position Certification, indicating the change in the position

Section 7.[~~6.~~] If the county elects, pursuant to KRS 78.530(3)(a), (d) or (f), to pay the cost of providing hazardous coverage for current employees for past service in positions approved for hazardous coverage, the county shall request and pay for an actuarial study to determine the cost.

Section 8 Local government employers may be obligated by statutes outside KRS Chapter 61 to certify certain positions as hazardous.

Section 9 Incorporation by Reference (1) The following material is incorporated by reference:

(a) "Form 2011, HP-2, Hazardous Position Certification," April 2009;

(b) "Form 7011, HP-1, Hazardous Participation Certification (CERS)", April 2009;

(c) "Form 7013, HP-1, Hazardous Participation Certification (KERS)", April 2009; and

(d) "Form 7025, Position Questionnaire", April 2009

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the[~~7. The forms required by this administrative regulation are incorporated by reference and are available from~~] Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, Monday through Friday, [~~between the hours of~~] 8 a.m. and 4:30 p.m. [~~Monday through Friday.~~]

RANDY OVERSTREET, Chair

APPROVED BY AGENCY: April 2, 2009

FILED WITH LRC: April 15, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2009 at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made 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 June 1, 2009. 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: Jennifer A. Jones, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800, extension 5501, fax (502) 696-8801.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Jennifer A. Jones

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedures for requesting hazardous duty coverage for eligible employees of a participating agency.

(b) The necessity of this administrative regulation. This administrative regulation is necessary to set out the procedures for requesting hazardous duty coverage for eligible employees of a participating agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61 592 provides for hazardous duty coverage for employees who meet the definition of hazardous duty and whose agency has petitioned the board and received approval for hazardous duty retirement coverage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing the procedures for an agency to request hazardous duty retirement coverage for its eligible employees.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides procedures to be followed for employees who begin participating in the County Employees Retirement System after September 1, 2008, and whose agency wishes to classify the position as hazardous duty for retirement purposes in accordance with statutory changes to KRS 61.592.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to statutory changes to KRS 61.592 effective September 1, 2008.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute KRS 61.592 provides for hazardous duty coverage for employees who meet the definition of hazardous duty and whose agency has petitioned and received approval from the board for hazardous duty retirement coverage. This amendment provides the procedures for agencies seeking hazardous duty coverage for employees who become employed on or after September 1, 2008.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by providing the procedures agencies seeking hazardous duty coverage for employees who become employed on or after September 1, 2008.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The individual or entity affected by this administrative regulation is the agency that will be seeking hazardous duty retirement coverage and the employees who will be working in those positions.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment They will have to comply with the procedures to request hazardous duty coverage.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies will be able to provide hazardous coverage for their employees who become employed on or after September 1, 2008.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid from the Retirement Allowance Account (trust and agency funds).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if n3ew, or by the change if it is an amendment: There is no increase in funding or fees required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not establish or directly or indirectly increase any fees

(9) TIERING: Is tiering applied? Tiering is not applied. Procedures are the same for all agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All agencies participating in one of the retirement systems administered by Kentucky Retirement Systems that wish to have its employees in hazardous covered positions.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.592, 78.530, and 78 545(31)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures or revenue due to the administrative regulation; however, agencies will have to pay a higher contribution rate for hazardous duty employees if they choose to seek hazardous coverage for those employees.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no revenues generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no revenues generated.

(c) How much will it cost to administer this program for the first year? There will be no change in cost for participating agencies.

(d) How much will it cost to administer this program for subsequent years? There will be no change in cost for participating agencies.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of this administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Kentucky Infrastructure Authority
(Amendment)

200 KAR 17:010. Guidelines for Infrastructure Revolving Fund.

RELATES TO: KRS Chapter 224A

STATUTORY AUTHORITY: KRS 224A 070(1), 224A 112, 224A.113

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A 070(1) and 224A 113 authorize the Kentucky Infrastructure Authority to promulgate administrative regulations in accordance with KRS Chapter 13A to govern the application for and provision of financial assistance to governmental agencies for the construction or acquisition of infrastructure projects from the Infrastructure Revolving Fund established pursuant to KRS 224A 112.

Section 1 Definitions For the purposes of this administrative regulation the words and terms used shall have the same meaning as in KRS 224A.011, with the following additions:

(1) "Applicant" shall mean any eligible applicant, pursuant to Section 2 of this administrative regulation, that has submitted an application for funds to the Authority

(2) "Authority" shall mean the Kentucky Infrastructure Authority, Office of the Governor, established in accordance with KRS 224A 030 or its successor.

(3) "Closing date" shall mean the date established by the Authority for execution of the assistance agreement upon satisfaction of the conditions contained in the conditional commitment letter.

(4) "Conditional commitment letter" shall mean a letter delivered to the applicant stating the Authority's commitment to provide financial assistance subject to the satisfaction of certain conditions by the applicant on or before the closing date.

(5) "Kentucky eClearinghouse" means the automated Kentucky State Clearinghouse coordinating the Federal Executive Review Process and Kentucky Intergovernmental Review Process, for which the Department for Local Government, Office of the Governor, has been designated as the single point of contact for federal or state funding financial assistance as required by KRS 147A 021(3)(k).

(6) "Kentucky State Data Center" means the agency within the Urban Studies Institute of the University of Louisville designated by the Commonwealth to serve as the repository and analyst of data and information generated by the U. S Census Bureau.

(7) "Median household income" means the statistical middle value in household income, considering all households in Kentucky, with an equal number of households above and below the middle value, as determined by the Kentucky State Data Center.

(8) "Regionalization" means the creation of expanded service areas which take in a large geographic area of multiple systems; the creation of multijurisdictional utility commissions, special districts, authorities, or corporations; the utilization of interlocal cooperation agreements; the consolidated operation or management of multiple systems which may include regional facilities, smaller systems, or onsite systems; or the merger, consolidation, or combination of two (2) or more existing facilities or systems

Section 2. Eligible Applicants. (1) Any governmental agency, as defined in KRS 224A 011, or investor-owned water system, as provided for in KRS 96 540, 224A 306, 224A 308, and 224A 310, is eligible to apply to receive financial assistance for construction or acquisition of infrastructure projects.

(2) Each applicant shall have or shall attain the legal authority necessary for constructing, operating and maintaining the proposed infrastructure project. The applicant shall also have the legal authority to obtain, give security for, and repay a proposed loan. The applicant shall be responsible for operating, maintaining and managing the infrastructure project and providing for its continued availability and use at rates and terms that shall be adequate to meet its obligations as they become due including any loan or loans outstanding. If the infrastructure project is to be operated, maintained or managed by a third party under contract, management agreement or written lease, the applicant shall nevertheless continue to be responsible for compliance with the requirements of this section.

Section 3. Eligible Infrastructure Projects Monies in the Infrastructure Revolving Fund shall be used for infrastructure projects that will enhance the health, safety, and welfare in local communities as determined by the Authority based upon each application. Eligible activities include infrastructure projects as defined in KRS 224A.011(16).

Section 4 Submission Requirements and Review Process. (1) An application shall be submitted to the Kentucky Infrastructure Authority, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Attention: Executive Director.

(2) Application forms may be obtained from the Authority.

(3) Applicants may supplement their applications during the review process to clarify or explain the project scope, funds pledged as repayment of the loan, or make adjustments in the application to enhance the programmatic or financial feasibility of the project.

(4) Applicants are required to submit to the Authority a current endorsement letter from the Kentucky eClearinghouse.

Section 5 Criteria for Awarding Financial Assistance (1) The Authority shall select eligible projects for financial assistance taking into consideration the following:

(a) Total cost of the project;

(b) Availability of other funding for the project;

(c) Number of unserved and underserved households;

(d) Regional impact of the project; and

(e) Consistency with the Area Water Management Plan (if applicable).

(2) Financial review of the project applications shall include analysis of:

(a) The appropriateness and adequacy of revenues pledged for the repayment of financial assistance;

(b) The validity of the assumptions used to project new revenues resulting from the project;

(c) Security of monies other than the infrastructure financial assistance pledged to fund the project cost;

(d) Ability of the applicant to provide for maintenance and operations cost of the project and related public service system;

(e) Ability of the applicant to service existing debt of the system and debt related to the project; and

(f) Ability of the Authority to finance the applicant project using the financing programs permitted by state and federal law or regulation.

Section 6 Financial Assistance Process (1) Upon completion of the credit review by the Authority, the application shall be submitted to the Authority's board for final action. The credit review shall include an analysis of the applicant's ability to generate sufficient revenue based on financial statements provided by the applicant to cover operating costs and to repay the required principal, interest, fees, and reserves required by receipt of the financial assistance

(2) If the Authority's board approves the application, a Conditional Commitment Letter shall be issued to the applicant. This letter shall set forth the conditions and documentations required prior to execution of an assistance agreement. No funds shall be provided until the assistance agreement is fully executed. The commitment shall be made upon the Authority's satisfaction that the project proposed is financially feasible, the applicant is credit worthy and the project shall comply with all technical and program requirements set forth in state and federal law and regulations including certification by the applicant as to compliance with KRS 224A 306 requiring an uniform system of accounts and cost-based rates.

(3)(a) The Authority shall establish interest rates based on:

1. Prevailing market conditions;

2 Availability of funds; and

3 Demand for financial assistance.

(b) The executive director of the Authority shall recommend rates to the Authority's board for approval at least annually.

(c) The rate of interest on each the financial assistance shall be set forth in the conditional commitment letter.

(d) Interest rates shall be offered at the:

1. Standard rate; and

2. A nonstandard rate or rates, which may be lower than the standard rate.

(e) Applicants shall receive the standard rate of interest unless they qualify for a nonstandard rate

(f) An applicant shall qualify for a nonstandard rate if:

1. The median household income of the applicant's jurisdiction

or service area as published by the Kentucky State Data Center is below the state median household income;

2. The applicant can document that the median household income of the users in the project area is lower than the state median household income published by the Kentucky State Data Center;

3. Regionalization as set out in Section 1(8) of this administrative regulation and verified by the Authority;

4. The existence of an order or judgment addressing environmental noncompliance; or

5. Other criteria that the Authority may determine from time to time.

(g) If the nature of the project financed by the Authority's financial assistance causes interest on any Authority bonds issued to fund the project to become taxable, the Authority may consider adjustments in the interest rate to reflect the additional costs of Authority funds.

(4) Financial assistance repayments shall not exceed thirty (30) years. Principal and interest shall be payable semiannually, unless the Authority establishes a more frequent payment schedule. The repayment period may be less than thirty (30) years upon election of the Authority.

(a) Interest payments on the outstanding principal amount of the financial assistance shall be paid semiannually and shall commence within six (6) months of the initial disbursement of financial assistance proceeds.

(b) Principal and interest payments will commence on June 1 or December 1 immediately succeeding the date of the last draw of funds unless the principal payments are directly dependent upon revenues generated from the project. If the principal payments are directly dependent upon revenues, principal payments will commence on the June 1 or December 1 immediately succeeding the date the project is completed. Principal payments shall be payable semiannually, unless the Authority establishes a more frequent payment schedule. The Authority may also require that repayment occurs via an electronic debit of the applicant's account.

(5) The principal amount of financial assistance shall be equal to the amount approved by the Authority. The final amount of financial assistance may be adjusted by the Authority's director up to ten (10) percent of the amount stated in the Conditional Commitment Letter without further action by the Authority's board, subject to availability of user fees to service the debt, the Commonwealth's Capital Projects and Bond Oversight Committee approval and Authority funds to provide the increase.

(6) The assistance agreement between the Authority and applicant shall contain such terms and conditions as the Authority deems necessary to maintain the financial integrity of the Infrastructure Revolving Fund according to the circumstances of each project.

Section 7. Financial Assistance Closing and Extensions. An applicant shall meet all conditions for closing and take action to award contracts for the project within not more than twelve (12) calendar months after the date of the conditional commitment letter, otherwise, the commitment shall expire. One (1) extension period of up to six (6) months may be granted if needed. If the extension is denied, the financial assistance offer may be rescinded. If a request for a time extension is granted, but all the conditions still cannot be met during the extension period, the commitment may be rescinded. The applicant may reapply for any project for which the commitment has expired or rescinded under this section.

Section 8. Authority to Administer the Program. The Authority shall monitor the assistance agreements and require that financial reports be made available to the Authority by the applicant at such intervals as shall be deemed necessary by the Authority. The Authority shall monitor the cash flows of the project and perform all actions that shall be required to assure that the agreements continuously meet the program standards established by this administrative regulation.

Section 9. Administrative Fees. There shall be an annual administrative fee of two-tenths (0.2) percent charged on the unpaid balance of all financial assistance. This fee shall apply to the unpaid balance of the financial assistance and shall be used to defray the Authority's expenses of servicing the financial assistance and necessary operating expenses of the program. [~~STATUTORY AUTHORITY: KRS Chapter 13A, 224A.070(1), 224A.113~~

~~NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.070(1) and 224A.113 authorize the Kentucky Infrastructure Authority to promulgate administrative regulations in accordance with KRS Chapter 13A, to govern the application for and provision of financial assistance to governmental agencies for the construction or acquisition of infrastructure projects from the Infrastructure Revolving Fund.~~

~~Section 1. Definitions. For the purposes of this administrative regulation the words and terms used shall have the same meaning as in KRS 224A.011, with the following additions:~~

~~(1) "Applicant" shall mean any governmental agency that has submitted an application for funds to the Kentucky Infrastructure Authority.~~

~~(2) "State clearinghouse" shall mean a review conducted within the Department of Local Government pursuant to federal or state law or regulations.~~

~~(3) "Authority staff" shall mean the Office for Investment and Debt Management.~~

~~(4) "Conditional commitment letter" shall mean a letter delivered to the borrowing governmental agency issuing the authority's commitment to provide a loan conditional on certain actions by the governmental agency on or before the closing date.~~

~~(5) "Department" shall mean the Department of Local Government.~~

~~(6) "Closing date" shall mean the date established by the authority for execution of the assistance agreement immediately preceding the award of construction contracts and satisfaction of conditions on the loan.~~

~~(7) "Index rate" shall mean the average of the Bond Buyer indexes - twenty (20) G.O. Bonds as published weekly in the Bond Buyer (a financial newspaper published in New York) calculated based on the weeks falling within each calendar quarter. This average shall be rounded to the nearest one tenth (.1) of one (1) percent.~~

~~Section 2. Eligible Applicants. (1) Any governmental agency, as defined in KRS 224A.011, is eligible to apply to receive financial assistance for construction or acquisition of infrastructure projects.~~

~~(2) Each applicant shall certify in writing that it is unable to finance the entire infrastructure project from its own resources. Documentation evidencing its inability shall include the following:~~

~~(a) Letters from local lending institutions.~~

~~(b) An opinion of bond counsel, if applicable.~~

~~(c) If funds are for wastewater treatment facility, a statement from the Natural Resources and Environmental Protection Cabinet stating either:~~

~~1. The applicant will not qualify for funding during the current funding cycle;~~

~~2. The applicant has applied and fallen below the funding level in two (2) consecutive attempts; or~~

~~3. The applicant needs to supplement Natural Resources and Environmental Protection funds.~~

~~(d) If the applicant is in an area which qualifies for assistance through the Farmer's Home Administration ("FmHA"), a statement stating either:~~

~~1. The applicant would not qualify for funding;~~

~~2. Applicant has previously applied for FmHA funding and has failed to receive assistance in two (2) consecutive attempts; or~~

~~3. The applicant needs to supplement the FmHA funds with Infrastructure Revolving Fund.~~

~~(e) Statements from any other sources or other certifications, which have a bearing on the application, shall be considered.~~

~~(3) Each applicant shall have or shall attain the legal authority necessary for constructing, operating and maintaining the proposed infrastructure project. The applicant shall also have the legal authority to obtain, give security for, and repay the proposed loan. The applicant shall be responsible for operating, maintaining and managing the infrastructure project and providing for its continued~~

~~availability and use at rates and terms that shall be adequate to meet its obligations as they become due including any loan. If the infrastructure project is to be operated, maintained or managed by a third party under contract, management agreement or written lease, the applicant shall nevertheless continue to be responsible for compliance with the requirements of this section.~~

~~Section 3. Eligible Infrastructure Projects. Monies in the Infrastructure Revolving Fund shall be used for infrastructure projects which will enhance the health, safety and welfare, and encourage economic development opportunities in local communities as determined by the authority based upon each application. Eligible activities include infrastructure projects as defined in KRS 224A.011(13).~~

~~Section 4. Submission Requirements and Review Process. (1) The original and one (1) copy of each application shall be submitted to: Department of Local Government, Capital Plaza Tower, Second Floor, Frankfort, Kentucky 40601, Attention: Director, Division of Community Programs, and one (1) copy of each application shall be simultaneously submitted to the Kentucky Infrastructure Authority, Room 318, Capitol Annex Building, Frankfort, Kentucky 40601, Attention: Executive Director.~~

~~(2) Application forms may be obtained from the Department of Local Government, and a complete set of application forms shall be submitted before an application shall be considered for assistance from the Infrastructure Revolving Fund.~~

~~(3) Only one (1) application from an eligible applicant shall be accepted at one (1) time. An application may be withdrawn at any time by an applicant, and any project previously disapproved for assistance from the Infrastructure Revolving Fund may be resubmitted.~~

~~(4) The time frame for application review shall be: forty-five (45) days for Kentucky State Clearinghouse review, thirty (30) days for Department of Local Government review and priority assignment; and thirty (30) days for authority credit review, except the agencies responsible for each part of the review may extend the time for review beyond these guidelines as may be necessary for thorough review, or to obtain from the applicant, and to consider clarification of anything contained in the application. Applicants may supplement their applications during the review process to clarify or explain the project scope, funds pledged as repayment of the loan, or make adjustments in the application to enhance the programmatic or financial feasibility of the project.~~

~~Section 5. Criteria for Selecting Eligible Projects. (1) The Department of Local Government shall select and determine eligible projects for loans or grants. The department shall take into consideration the following:~~

~~(a) Unemployment data, which shall be specific to the county or counties from which the application originates and shall reflect the most recent figures available from each county.~~

~~(b) The applicant's relationship to the capital investment plan, which shall determine how well the infrastructure project fits into the economic strategy of the community. An infrastructure project which directly relates to economic development is one that stimulates the creation of new job opportunities or prevents the loss of a significant number of jobs. An infrastructure project shall be considered based on the degree to which it enhances economic development efforts through job creation or retention and the level of priority in the community's capital investment plan.~~

~~(c) The department shall determine the extent of the need for the infrastructure project and the impact which the project will have on the local economic development efforts. A primary consideration shall be whether jobs will be created or retained as a result of the infrastructure project.~~

~~(d) The department shall determine if the proposed costs of completing the infrastructure project is reasonable given the geographic location of the infrastructure project, current pricing trends, required professional services, and any other factors that may have a bearing on the project. Cost figures submitted in the application shall be reviewed to determine whether the proposed budget for the project is feasible.~~

~~(e) The department shall determine the overall project effectiveness and determine if the most beneficial project has been designed for the use of the Infrastructure Revolving Fund.~~

~~(2) The department shall review applications and assign a priority ranking based on the selection criteria. Projects shall be ranked as Priority I, Priority II, or Priority III.~~

~~(a) A Priority I ranking shall be assigned when, having considered all criteria, the project will make a significant economic impact on the community through the creation or retention of jobs; is well designed; cost effective; and, generally, determined by the department to be the most suitable solution to the community's needs.~~

~~(b) Priority II shall be assigned when one (1) or more factors exist which would limit the success or feasibility of the project.~~

~~(c) Priority III shall be assigned when, having considered all the criteria, the department finds that the project is premature, is not feasible, or is inappropriate for assistance from the Infrastructure Revolving Fund.~~

~~(d) The department shall recommend Priority I rankings to the authority's staff for financial review.~~

~~(3) Financial review of the Priority I designated project applications shall include:~~

~~(a) Analysis of:~~

~~1. The appropriateness of the type of revenues pledged for the repayment of the loan;~~

~~2. The validity of the assumptions used to project new revenues resulting from the project;~~

~~3. Security of monies other than the infrastructure loan pledged to fund the project cost;~~

~~4. Ability of the applicant to provide for maintenance and operations cost of the project and related public service system;~~

~~5. Ability of the applicant to service existing debt of the system related to the project;~~

~~6. Security of funds pledged by entities, other than the applicant, to repay the infrastructure loan; and~~

~~7. Ability of the authority to finance the applicant project using the financing programs permitted by Kentucky and federal law or regulation.~~

~~(b) At any time during the financial analysis, an applicant may be notified of a deficiency. If the problem cannot be resolved through negotiation, the authority may remove the application from consideration.~~

~~Section 6. Loan Process. (1) Upon completion of the credit review by the authority's staff, the application shall be submitted to the authority for final action.~~

~~(2) If the authority approves the application, a conditional commitment letter shall be issued to the applicant. This letter shall set forth the conditions and documentations required by the authority prior to execution of an assistance agreement. No funds shall be provided until the assistance agreement is fully executed. The commitment shall be made upon the authority's satisfaction that the project proposed is financially feasible, the applicant is credit worthy and the project shall comply with all technical and program requirements set forth in state and federal law and regulations.~~

~~(3) The authority shall establish interest rates quarterly based on prevailing market conditions. The rate of interest on each loan shall be set forth in the conditional commitment letter. There shall be two (2) rates of interest offered, the above median income interest rate and the below median income interest rate. The above median income interest rate shall be the index rate less two (2) percent. The above median interest rate shall apply to borrowers whose jurisdiction lies within a county whose median family income level is above or equal to the statewide median household income level. The below median interest rate shall be the index rate less four (4) percent. The below median interest rate shall apply to borrowers whose jurisdiction lies within a county whose median family income is below the statewide average family income. The most recent statistics on family income as published by the Urban Studies Center, University of Louisville, shall apply. If a borrower's jurisdiction lies within more than one (1) county, the average of the median family income of all the counties covered by the borrowers jurisdiction shall determine the applicable interest rate. If the median family income level of an applicant's community differs significantly from that of the applicant's county, the authority may consid-~~

~~or adjustment of the interest rate to the below median income rate. If the nature of a project financed by the authority's loan causes the authority bonds issued to fund the project to become taxable as interest, the authority may consider adjustments in the interest rate to reflect the additional costs of authority funds.~~

~~(4) Loan repayments shall not exceed thirty (30) years, and principal shall be payable annually, and interest semiannually, unless the authority establishes a more frequent payment schedule due to credit concerns. The loan repayment period may be less than thirty (30) years upon election of the authority. Loan repayments shall commence within six (6) months after the start of construction, unless repayment is dependent on revenues generated from the specific infrastructure project. In such cases, loan repayment shall begin within six (6) months after the infrastructure project is operational, and interest to cover the authority's cost of money during the construction period may be added to the amount of the loan.~~

~~(5) The principal amount of each loan shall be equal to the amount approved by the authority. The final loan amount may be adjusted by up to ten (10) percent of the commitment without further action by the authority, subject to availability of funds to service the debt.~~

~~(6) Upon certification by the project engineer of construction of the infrastructure project as eighty (80) percent complete, and the submission by the applicant of evidence of the exact cost of the project, an inspection shall be held by the authority staff to provide for any adjustments in the loan amount.~~

~~(7) To assure adequate funds for major maintenance and replacement of the projects funded by this program, the borrower shall be required to set aside annually from current revenues in excess of operations, maintenance and debt service requirements an amount equal to ten (10) percent of average annual debt service on the authority's loan. These amounts are to be deposited into a separate bank account until the balance is equal to five (5) percent of the original principal amount of the loan. Monies may be withdrawn from the account when major maintenance or replacements of equipment in excess of budgeted amounts are required. Such withdrawals shall be replaced from the successive year's revenue for the maintenance of the required five (5) percent balance. If the applicant is not the operator of the infrastructure project and the nature of the revenues pledged to repay the authority's loans are not generated by the project, this requirement may be waived.~~

~~(8) The assistance agreement between the authority and application shall contain such terms and conditions as the authority deems necessary to maintain the financial integrity of the Infrastructure Revolving Fund according to the circumstances of each project.~~

~~Section 7. Applicant Management Capacity. The department and the authority's staff shall require as a condition of any loan that the applicant perform any or all of the following:~~

~~(1) Document compliance with statutory mandates for financial accountability and personnel management.~~

~~(2) Demonstrate the ability to operate, as well as maintain, the project in a proper manner over the life of the loan.~~

~~(3) Document compliance with any other state or federal agencies.~~

~~Section 8. Loan Closing and Extensions. An applicant shall meet all conditions for loan closing and take action to award contracts for the project within not more than eleven (11) calendar months after the date of the conditional commitment letter, otherwise, the loan commitment shall expire. (For example, if an application was approved on January 1, 1989, bids for the project shall be accepted and the loan agreement signed by November 30, 1989.) One (1) extension period of up to six (6) months may be granted if needed. If the extension is denied, the loan offer may be rescinded. If a request for a time extension is granted, but all the conditions still cannot be met during the extension period, the loan commitment may be rescinded. The applicant may reapply for any project for which the loan commitment has been expired or been rescinded under this section.~~

~~Section 9. Authority to Administer the Program. The authority shall monitor the assistance agreements and require that financial reports be made available to the authority by the governmental agency at such intervals as shall be deemed necessary by the authority. The authority shall monitor the economic impact on the community, the cash flows of the project, and perform all actions that shall be required to assure that the agreements continuously meet the program standards established by this administrative regulation. There shall be an annual administrative fee of two tenths (.2) of one (1) percent charged on the unpaid balance of all loans. This fee shall be applied to the servicing costs of the loans and necessary operating expenses of the program.]~~

This is to certify that the Kentucky Infrastructure Authority Board of Directors has reviewed and approved this administrative regulation, prior to its filing by the Kentucky Infrastructure Authority, Office of the Governor, with the Legislative Research Commission as required by KRS 224A.113.

TONY WILDER, Chair
JOHN E. COVINGTON, III, Executive Director
APPROVED BY AGENCY: March 23, 2009
FILED WITH LRC: March 25, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 29, 2009, at 1:30 p.m. at 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This 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 June 1, 2009. 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: Ms. Kasi White, Financial Analyst, Kentucky Infrastructure Authority, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, phone: (502) 573-0260, fax: (502) 573-0157.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ms Kasi White

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will allow the Kentucky Infrastructure Authority to continue to provide financial assistance to governmental agencies for the construction or acquisition of infrastructure projects as funds are available to the Authority.

(b) The necessity of this administrative regulation This administrative regulation is necessary to provide financial assistance, for water and sewer projects.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224A.112 authorizes the Kentucky Infrastructure Authority to provide financial assistance through the Infrastructure Revolving Fund as funds are available, and KRS 224A.113 empowers the Kentucky Infrastructure Authority to promulgate administrative regulations to implement KRS 224A.112. This administrative regulation establishes the requirements and conditions precedent in the provision of financial assistance to governmental agencies for the construction or acquisition of infrastructure projects from funds available to the Kentucky Infrastructure Authority.

(d) How this administrative regulation currently assists in the effective administration of the statutes: This administrative regulation allows the Kentucky Infrastructure Authority to govern the application for and provision of financial assistance to governmental agencies for the construction and acquisition of infrastructure projects. This regulation will allow the Authority to update the program guidelines to continue providing financial assistance to governmental agencies for infrastructure projects.

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will update the existing regulation to eliminate those facets of the program that are no longer applicable to the Infrastructure Revolving Fund and to update the procedures for establishing interest rates on a periodic basis.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to bring current the requirements relating to the provision of financial assistance to governmental agencies, for infrastructure projects.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224A.112 authorizes the Kentucky Infrastructure Authority to provide financial assistance through the Infrastructure Revolving Fund as funds are available, and KRS 224A.113 empowers the Kentucky Infrastructure Authority to promulgate administrative regulations to implement KRS 224A.112.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will allow the Authority to update the program guidelines to continue providing financial assistance to governmental agencies for infrastructure projects.

(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 citizens of the Commonwealth by providing financial assistance to city and county governments, water and sewer districts, and municipal utilities for construction or acquisition of infrastructure projects that will provide service to their customers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The impact this regulation will have on the citizens of the Commonwealth is positive in that those agencies will be able to provide more affordable clean and safe drinking water treatment and transportation of wastewater, and other infrastructure projects due to lower capital costs.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All eligible applicants must apply to the Authority to be eligible to receive financial assistance, meet specific criteria and be approved by the Authority's Board of Directors.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new costs incurred by eligible applicants. Existing costs include the interest incurred, if applicable, on the loans and all recipients must pay a fee equal to 0.2 of 1 percent on the unpaid balance of the loan or grant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In addition to providing clean and safe drinking water, treating wastewater, and other infrastructure projects, providing this financial assistance with allow the eligible applicants to provide a service and maintain affordable rates to benefit its customers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no additional cost for implementation of this administrative regulation. Funds will be administered and managed with existing staff and through the normal operations of the Kentucky Infrastructure Authority.

(b) On a continuing basis: There will be no additional cost for the continued implementation of this administrative regulation. Funds will be administered and managed with existing staff and through the normal operations of the Kentucky Infrastructure Authority.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Repayment streams from existing loans and the collection of administrative fees will be used for implementation of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increases to fees are 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: This administrative regulation does not establish any new fee or directly or indirectly increase any fees

(9) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact city and county governments.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation does not affect any federal statute or federal regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect of this regulation on expenditures and revenues of the city and county governments will be the costs of the infrastructure project and revenues generated from the service provided by the project.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The revenues generated by the city and county governments will depend on what type of infrastructure project is constructed and the service provided.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenues generated by the city and county governments will depend on what type of infrastructure project is constructed and the service provided

(c) How much will it cost to administer this program for the first year? The cost to the city and county governments will depend on what type of infrastructure project is constructed and the service provided.

(d) How much will it cost to administer this program for subsequent years? The cost to the city and county governments will depend on what type of infrastructure project is constructed and the service provided.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-).

Other Explanation:

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Amendment)

201 KAR 1:065. Individual license renewal and fee.

RELATES TO: KRS 325.330

STATUTORY AUTHORITY: KRS 325.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.330 establishes the standards for license renewal and fees for certified public accountants. This administrative regulation describes the procedures and fees for a certified public accountant to renew a license.

Section 1. A certified public accountant[~~person~~] seeking to renew his or her license shall:

(1) Utilize the online procedure offered by the board; and

(2) Pay a renewal fee in the amount of $100[~~submit:~~

~~(1) The computer-generated renewal form sent by the board,~~

~~(2) A check or money order made payable to the "Kentucky State Board of Accountancy" in the amount of $100, and~~

~~(3) A continuing professional education report as required by 201 KAR 1:100~~].

Section 2. If a certified public accountant is unable to utilize the online procedures, he or she shall

(1) Submit a written request to the board staff to obtain a paper application;

(2) Complete and submit the application to the board, and

(3) Submit a check or money order made payable to the "Kentucky State Board of Accountancy" in the amount of $100.

Section 3. A license shall expire on July 1 of the second year following the date it was issued and shall be subject to renewal as follows:

(1) Even-numbered licenses shall be renewed in even-numbered years; and

(2) Odd-numbered licenses shall be renewed in odd-numbered years. [~~Section 3. (1) In May of the licensee's renewal year, the board shall send a computer-generated license renewal notice to the licensee at the address on file with the board.~~

~~(2) The licensee shall return the renewal form as indicated in Section 1 of this administrative regulation correcting, deleting or adding to the information on file.~~]

Section 4. Incorporation by Reference. (1) "Permit Renewal Application", 2009,[~~(2009)~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, between 8 a.m. to 4:30 p.m.

REBECCA PHILLIPS, CPA, President

APPROVED BY AGENCY: April 14, 2009

FILED WITH LRC: April 15, 2009 at 10 a.m.

NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2009 at 10 a.m., EST, at the administrative offices of the Board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 work days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2009. 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: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes the procedures to be followed to renew a license.

(b) The necessity of this administrative regulation: To insure that CPAs are aware of the changes to the procedures to renew their license.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.330(1)(c) requires CPAs to comply with the renewal process promulgated in an administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By having CPAs be aware of the process to renew their licenses.

(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: It allows CPAs to renew their licenses online as opposed to mailing in a renewal form.

(b) The necessity of the amendment to this administrative regulation: The current regulation only provides for renewal of a license by sending in a paper renewal form. This amendment allows for renewal though an online process.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes authorize the board to establish renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: It will improve the process by which licenses are renewed and allow CPAs the chance to pay for the renewal fees with a credit card

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 3,500 CPAs per year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will be allowed to renew their license online and pay for the fee with a credit card.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). It is anticipated between an additional $2-$4 due to the fees charged by the credit card companies and the company that operates the website through a contract with the Finance Cabinet.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be able to renew their license online and pay for the fee with a credit card.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Approximately $500 to update the database where the information is stored.

(b) On a continuing basis: Nothing

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board operates solely on the funds contained its trust and agency account.

(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 is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Those who wish to pay with a credit card online will have to pay the fees charged by the credit card companies.

(9) TIERING: Is tiering applied? Tiering is not applied since CPAs may still choose to renew with a paper application.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? State Board of Accountancy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.330(4).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? Approximately $500 to make some changes to the data base operated by the board.

(d) How much will it cost to administer this program for subsequent years? Nothing that the agency is not already spending to renew licenses.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The amendment to this regulation is to allow the board to offer a CPA the chance to renew his or her license though an online renewal process. It is anticipated this change could help reduce costs to the board by no longer expending funds to print paper applications and postage fees for mailing out the applications.

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(Amendment)

201 KAR 1:100. Continuing professional education requirements.

RELATES TO KRS 325 330

STATUTORY AUTHORITY: KRS 325.240, 325 330(4)(a), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.330(4) establishes requirements to renew a license to practice as a certified public accountant. This administrative regulation establishes the continuing professional education requirements a certified public accountant[an applicant] shall satisfy to renew[for renewal of] a license.

Section 1. Definitions. "Continuing professional education hour" means a fifty (50) minute period excluding meals, breaks, and business sessions. Each unit of credit [and] for a university or college course[courses, each unit of credit] shall equal the following continuing education contact hours:

(1) One (1) semester hour equals fifteen (15) CPE hours; and

(2) One (1) quarter hour equals ten (10) CPE hours.

Section 2. Requirements for Continuing Professional Education Credit. (1) [Effective with license renewal for July 1, 2002 and subsequent years,] Each licensee who worked 3000 hours or more in a public accounting firm registered with the board during the two (2) calendar years prior to the renewal date of their license shall report to the board successful completion of eighty (80) hours of continuing professional education. The eighty (80) hours shall be earned during the preceding two (2) calendar years All other licensees[others] shall obtain sixty (60) hours.

(2) Effective with license renewal for July 1, 2010 and subsequent years, each licensee shall report to the board successful completion of two (2) hours of continuing professional education in professional ethics. These two (2) hours shall be included as part of the eighty (80) or sixty (60) hours a licensee is required to complete to renew their license Acceptable courses in professional ethics are those related to:

(a) The Rules of Professional Conduct found in 201 KAR 1:300; and

(b) Similar standards and principles of professional ethics that licensees employed in education, government or industry positions adhere to as a result of their employment.

(3) A certified public accountant[licensee seeking renewal of his license in this state] who for the majority of the two (2) calendar years prior to renewal of his or her license did not operate or work in an office in this[at the time of renewal his principal office is located in another] state shall satisfy the requirements of this section by complying with[satisfying] the continuing professional education requirements for renewal of his or her license in the state in which his or her principal office is located or the office where the licensee worked a majority of the time. If the state in which the licensee's principal office is located or the office where the licensee worked a majority of time has no continuing professional education requirements for renewal of a license, the licensee shall comply with all continuing professional education requirements for renewal of a license in this state.

Section 3. Each licensee who held a license for less than a full two (2) calendar year period shall be required to obtain two (2) hours of continuing professional education for each full month a license was held not to exceed the total number of required hours for the reporting period. The two (2) hours in professional ethics shall not be required to be part of the hours completed in this time period

Section 4. Waivers from Continuing Professional Education. (1) The request for a reduction in or waiver of[from] the continuing professional education requirements shall be submitted on a form prepared[provided] by the board.

(2) A reduction or waiver may be granted by the board if the licensee[permit holder meets one (1) of the following]:

(a) Establishes that he or she is physically or psychologically unable to complete the continuing professional education requirements. The licensee shall submit with each request a statement[and submits statements] from a licensed physician[physicians] or other appropriate licensed health care provider that substantiates the physical or psychological claim of the licensee[authentics];

(b) Has encountered a severe personal hardship which made it extremely difficult or impossible to meet the continuing professional education requirements.[and] The hardship shall be[is] described in writing on the waiver form. The board may request the licensee to substantiate with documentation the hardship described on the waiver form; or

(c) Is completely retired from the practice of accounting and is fifty-five (55) years of age or older. Completely retired means a licensee shall not provide or perform any regulated activity for a client. A licensee who only manages his or her[performing accounting services in the practice of public accounting, education, government or industry except for management of] personal assets or investments shall be eligible for this waiver.

(3) The board shall advise a licensee[respond] in writing whether the request is approved or denied[, accepting or rejecting all waiver requests. Rejections shall specify the reasons for the rejection].

(4) A licensee granted a waiver[All licensees granted waivers] shall reaffirm the basis of the waiver when the license is next renewed.

(5) If the circumstances which form the basis of the waiver change, the licensee shall notify the board within thirty (30) days from the date of the change and resume compliance with the continuing professional education requirements from the date of the change.

Section 5. Exemption from Continuing Professional Education. (1) A licensee who at the time of renewal is sixty-five (65) years of age or older and has been licensed continuously for twenty-five (25) years or more shall be exempt from the continuing education requirements.

(2) This exemption shall cease after the renewal of licenses in 2009.

Section 6. Programs which Qualify. (1) The overriding consideration in determining whether a specific program qualifies as acceptable continuing professional education shall be whether it is a formal program of learning which contributes directly to the professional competence of an individual licensed to practice as a certified public accountant in this state.

(2) Continuing professional education programs may qualify only if.

(a) An outline of the program is prepared in advance and preserved;

(b) The program is at least one (1) continuing professional education hour in length;

(c) The program is conducted by a qualified instructor. A qualified instructor or discussion leader shall be anyone whose background training, education or experience makes it appropriate for him

or her to lead a discussion on the subject matter of the particular program; [and]

(d) A record of registration or attendance is maintained; and

(e) A course completion document is given to each[the] attendee.

(3) Acceptable subject matter.

(a) The following general subject matters shall be considered[are] acceptable if the programs satisfy all of[meet] the criteria established by this administrative regulation:

1. Accounting and auditing;
2. Taxation;
3. Management services;
4. Information technology[Computer science];
5. Communication arts;
6. Mathematics;
7. Statistics;
8. [Probability and quantitative applications in business;
9.] Economics; and
9 [10.] Business law[;
11. Functional fields of business – finance, production, marketing, personnel relations, business management and organizations;
12. Specialized areas of industry (i.e., real estate, farming, etc.); and
13. Administration practice (i.e., engagement letters, personnel, etc.)].

(b) Areas other than those listed in paragraph (a) of this subsection may be acceptable if the licensee can demonstrate that they contribute directly to his or her professional competence as a certified public accountant. The responsibility for substantiating that a particular program is acceptable and meets the requirements of this administrative regulation shall be the obligation of[rests solely upon] the licensee.

(4) [Acceptable programs. The following group programs qualify for credit if they meet the standards specified in this administrative regulation:

(a) Professional education and development programs of national, state and local accounting organizations;

(b) Technical sessions at meetings of national, state and local accounting organizations and their chapters;

(c) University or college courses (both credit and noncredit courses);

(d) Formal in-firm education programs;

(e) Programs of other organizations (accounting, industrial, professional, etc.); and

(f) Firm meetings for staff or management groups which are structured as formal education programs. Portions of these meetings devoted to the communication and application of general professional policy or procedure may qualify. However, portions devoted to firm administrative, financial and operating matters shall not qualify.

(5)] Formal individual study programs.

(a) The amount of credit [to be] allowed for an[correspondence and formal] individual study course[programs, including taped study programs,] shall be recommended by the course[program] sponsor.

(b) A licensee claiming credit for an[Licensees claiming credits for such correspondence or formal] individual study course[courses] shall obtain evidence of satisfactory completion of the course from the course[program] sponsor.

(5)[(c) Evidence of satisfactory completion in this section shall be indicated by a sponsor verification of completion of a workbook or examination on the subject matter.

(d) Credit shall be allowed in the renewal period in which the course was completed.

(6)] Service as lecturer, discussion leader, or speaker.

(a) Instructors, discussion leaders and speakers may claim continuing professional education credit for both preparation and presentation time.

(b) Credit may be claimed for actual preparation time up to two (2) times the class contact hours.

(c) Credit as an instructor, discussion leader or speaker may be claimed if the presentation[session] is one which would meet the [continuing professional education] requirements of Section 6 of this administrative regulation[those attending].

(d) No credit shall be granted for repetitious presentations of group programs unless it can be demonstrated that the program content was substantially changed and such change required significant additional study or research.

(e) Maximum credit for such preparation and teachings shall not exceed sixty (60) percent of the renewal period requirement.

(6)[(7)] Published articles and[,] books.

(a) Credit may be awarded for published articles or books if[provided] they contribute directly to the professional competence of the licensee.

(b) Credit for preparation of such publications may be given on a self-declaration basis up to twenty-five (25) percent of the total education hours required.

(c) In exceptional circumstances, a licensee may request additional credit by submitting the article or book to the board with an explanation of the circumstances which he or she believes[feels] justifies a greater amount of credit.

(d) The board shall determine the amount of credit to be granted.

Section 7. Reporting and Controls. (1) It shall be the[Primary] responsibility of each licensee to obtain the appropriate documentation to establish that he or she completed the continuing professional education requirements.

(2) This documentation[for documenting the requirements have been met rests solely with the licensee, and evidence to support fulfilling these requirements] shall be retained by each licensee for a period of five (5) years[after completion of educational courses].

(3)[(2)] The board shall conduct annually a random audit to verify a certain percentage of licensees completed the amount of continuing professional education hours required to renew [on a test basis, information submitted by the licensee for renewal of] his or her license.

(4)[(3)] Course completion evidence shall consist of[be] a document prepared by the course sponsor indicating the licensee completed[participation in] a formal program of learning. A document shall include the[which includes]:

(a) Name of the program sponsor;

(b) Title and description of course content;

(c) Dates attended; and

(d) [Location, and

(e)] Number of continuing professional education [contact] hours awarded.

(5) A licensee who completed continuing professional education courses that complied with the requirements of this administrative regulation and were presented by or on behalf of his or her employer may submit to the board a list of the courses completed if the list contains the:

(a) Information described in subsection (3) of this section; and

(b) Signature of the person at the licensee's place of employment who verifies the accuracy of such information for a third party.

Section 8. Continuing Professional Education Sponsors. (1) Sponsors shall[are] not be required to register with the board.

(2) Detailed records of each program shall be kept by the sponsor which shall include:

(a) The date [and location] of the program presentation;

(b) The name[names] of each instructor or discussion leader;

(c) A listing of licensees attending each program presentation; and

(d) A written outline of the program presentation.

(3) Records shall be kept by the sponsor for a period of five (5) years following the date each program is presented.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial Request for Waiver of CPE Requirements[Continuing Professional Education] Waiver", 2009;

(b) "License Renewal – CPE Waiver Due to Medical or Personal Hardship", 2009; and

(c) "License Renewal – CPE Retirement Waiver", 2009[(2001)" is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, between 8 a.m. to 4.30 p.m.

REBECCA PHILLIPS, CPA, President

APPROVED BY AGENCY. April 14, 2009

FILED WITH LRC: April 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD NOTICE: A public hearing on this administrative regulation shall be held on May 22, 2009 at 10 a m., EST, at the administrative offices of the board located at 332 W. Broadway, Suite 310 Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by, 5 work days prior to the meeting, of their intent to attend If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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 June 1, 2009. 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. Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4281.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Carroll

(1) Provide a brief summary of.

(a) What this administrative regulation does: Establishes the criteria for continuing professional education that CPAs must satisfy to renew their licenses

(b) The necessity of this administrative regulation: To insure that CPAs are aware of the most recent changes to the various accounting and tax standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 325.330(4) authorizes the board to establish continuing professional education requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By having CPAs be aware of current changes in the tax and accounting standards so they will provide their clients with the most recent information.

(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 It will require each CPA to complete 2 hours of continuing professional education in ethics and eliminate an exemption for those over 65 years of age who are still practicing.

(b) The necessity of the amendment to this administrative regulation: Over the past few years boards of accountancy across the country (40 out of 50) have started requiring CPAs to take a minimum number of hours in ethics. It is the belief of these agencies that after the accounting and auditing failures associated with Enron and World Com that a minimum number of hours in ethics should be required of CPAs.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes authorize the board to establish continuing education requirements.

(d) How the amendment will assist in the effective administration of the statutes It will require CPAs to take a minimum number of hours in ethics with the intention that it will improve their practice of public accounting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Only CPAs will be affected by this amendment. It is difficult to know the exact number who will be affected since a large number of CPAs have already been obtaining hours in ethics courses over the years

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment They will be required to obtain 2 hours in ethics over a 2 year period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated a minimal amount since some CPAs have been obtaining this type of education previously and these hours could be included as a portion of other courses that a CPA was already attending to meet the remaining number of hours CPAs can obtain these hours by attending a course in person or via the Internet. A brief review of ethics courses offered by Internet providers reveals the average cost of a course to be $59 for 4 credit hours.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will become familiar with specific ethical issues that may have an impact on their practice as CPAs.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Nothing

(b) On a continuing basis: Nothing

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding is required. The board operates solely on the funds contained its trust and agency account.

(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 is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING. Is tiering applied? Tiering is not applied since all CPAs will be required to comply with these requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The State Board of Accountancy

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 325.330(4)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? Nothing in addition to what the agency already expends each year.

(d) How much will it cost to administer this program for subsequent years? Nothing in addition to what the agency already expends each year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The amendment to this regulation only requires CPAs to complete one 2-hour course in ethics. These hours are part of not in addition to the hours that CPAs are already required to obtain. Some CPAs have completed ethics courses in previous years since other states where CPAs hold a license have for years required continuing education in ethics.

GENERAL GOVERNMENT CABINET
Board of Pharmacy
(Amendment)

201 KAR 2:045. Technicians.

RELATES TO. KRS 315.010(18), (25), 315.020(4)(b), 315.191(1)(a), (g), (l)

STATUTORY AUTHORITY: KRS 315 010(18), (25), 315.020(4)(b), 315.191(1)(a), (g), (l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations governing pharmacy technicians. KRS 315.010(18) authorizes the board to permit a pharmacy technician to work under the general supervision of a pharmacist. KRS 315.191(1)(l) authorizes the board to promulgate administrative regulations establishing the qualifications a pharmacy technician is required to obtain prior to practicing under the general supervision of a pharmacist. This administrative regulation establishes the qualifications required for a pharmacy technician to practice under the general supervision of a pharmacist, and establishes the scope of practice for a pharmacy technician.

Section 1. A person shall be recognized by the board as a certified pharmacy technician, if:

(1)(a) He has successfully completed the National Certification Examination administered by the Pharmacy Technician Certification Board or the Institute for the Certification of Pharmacy Technicians (ICPT); and

(b) The certificate issued by the Pharmacy Technician Certification Board or the ICPT is current; or

(2) He has successfully completed a nuclear pharmacy technician program approved by the board [~~the nuclear pharmacy technician training program at the University of Tennessee~~].

Section 2. A certified pharmacy technician, subject to the supervision, as defined by KRS 315.010(25), of a pharmacist may perform the following functions:

(1) Certify for delivery unit dose mobile transport systems that have been refilled by another technician;

(2) Within a nuclear pharmacy, receive diagnostic orders, and

(3)(a) Initiate or receive a telephonic communication from a practitioner or practitioner's agent concerning refill authorization, after he clearly identifies himself as a certified pharmacy technician;

(b) If a practitioner or practitioner's agent communicates information that does not relate to the refill authorization:

1. A technician shall immediately inform the pharmacist; and

2. The pharmacist shall receive the communication.

Section 3. (1) A technician who has not been certified by the Pharmacy Technician Certification Board or the ICPT may perform the functions specified by Section 2 of this administrative regulation under the immediate supervision of a pharmacist.

(2) A function performed by a certified pharmacy technician or pharmacy technician shall be performed subject to the review of the pharmacist who directed the technician to perform the function.

(3) A pharmacist who directs a certified pharmacy technician or pharmacy technician to perform a function shall be responsible for the technician and the performance of the function.

(a) What this administrative regulation does This administrative regulation changes a specific nuclear pharmacy technician program to just a nuclear pharmacy technician program approved by the Board and recognizes a second national pharmacy technician program.

(b) The necessity of this administrative regulation: The regulation is necessary to comply with KRS 315.191(1)(a).

(c) How this administrative regulation conforms to the content of the authorizing statues. The regulation is in conformity with the authorizing statute that requires the board to issue a certificate to a pharmacy technician.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will change the requirement from a specific nuclear pharmacy technician program to a program approved by the Board and will allow the recognition of a second national pharmacy technician 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 will change the recognition of a specific nuclear training program to a program approved by the board and will recognize a second national pharmacy technician program.

(b) The necessity of the amendment to this administrative regulation: The nuclear training program previously referenced is no longer in existence and the second national pharmacy technician program is an option that was not previously available when the administrative regulation was first promulgated.

q(c) How the amendment conforms to the content of the authorizing statues: This amendment defines acceptable training programs for pharmacy technicians as authorized by KRS 315.191(1)(h).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow more pathways to training for pharmacy technicians.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates approximately 100 pharmacy technicians will become certified by the newly recognized pharmacy technician programs.

(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 There will be a second program available for pharmacy technicians to become nationally certified.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement this regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all technicians.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Pharmacy will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(a) requires or authorizes the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first

year? There will be no cost to the Board to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to the Board to administer this program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation. N/A

GENERAL GOVERNMENT
Board of Physical Therapy
(Amendment)

201 KAR 22:045. Continued competency requirements and procedures.

RELATES TO: KRS 327.010(1), (2), 327.070

STATUTORY AUTHORITY: KRS 327.040(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.040(10) authorizes the board to promulgate administrative regulations establishing a measure of continued competency as a condition of license renewal. This administrative regulation establishes continued competency requirements and procedures.

Section 1. Definitions. (1) "Contact hour" means the number of hours spent participating in an activity.

(2) "Continued competency" means a planned learning experience relating to the scope of physical therapy practice in KRS 327.010(1), whether the subject is intervention, examination, research, documentation, education, or management of health care delivery systems.

(3) "Practice in the field of physical therapy" means direct patient care, management of patient care, research, or teaching in a physical therapy educational program.

Section 2. (1) A credential holder applying for renewal shall have completed the continued competency requirements established in subsections (2) and (3) of this section during the preceding renewal period. Continued competency shall be based on contact hours awarded.

(a) For a physical therapist, the board shall require thirty (30) contact hours as a condition of licensure renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of an open book tutorial provided by the board on current physical therapy laws and administrative regulations per biennium;

2. At least eighteen (18) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than ten (10) hours may be earned from Category 2 described in subsection (3) of this section.

(b) For a Physical Therapist Assistant, the board shall require twenty (20) contact hours as a condition of renewal. These hours shall be obtained as follows:

1. Two (2) hours shall be awarded for the successful completion of an open book tutorial provided by the board on current physical therapy laws and administrative regulations per biennium;

2. At least ten (10) hours shall be earned from Category 1 described in subsection (2) of this section; and

3. No more than eight (8) hours may be earned from Category 2 described in subsection (3) of this section.

(2) Category 1 continued competency shall be any of the following:

(a) Completion of courses, seminars, workshops, symposia or home study courses consisting of at least three (3) contact hours that have been approved by board, the board's designee, APTA or its components, or any other physical therapy licensing agency;

(b) Completion or auditing of an accredited postsecondary educational institution credit course.

1. Twelve (12) contact hours shall be awarded for each semester credit hour completed; and

2. Eight (8) contact hours shall be awarded for each quarter credit hour completed;

(c) Presentation of continuing education courses, workshops, seminars, or symposia that have been approved by KSBPT or its designee;

(d) Authorship of a presented scientific poster, scientific platform presentation or published article undergoing peer review, but not more than ten (10) contact hours per event with a maximum of two (2) events per biennium;

(e) Teaching part of a physical therapy or physical therapist assistant credit course if that teaching is not the primary employment of the credential holder, but not more than twenty (20) contact hours per biennium;

(f) Certification or recertification of clinical specialization within the scope of physical therapy practice. Twenty-eight (28) contact hours shall be awarded per biennium;

(g) Completion of a clinical residency program, but not more than five (5) contact hours for each week of residency with a maximum of twenty-eight (28) contact hours per program per biennium;

(h) Engaging in the practice of physical therapy as defined by KRS 327.010(2) at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium;

(i) Engaging in the instruction in a CAPTE accredited physical therapy or physical therapy assistant program at least 1,000 hours per biennium. Five (5) contact hours shall be awarded per biennium.

(j) Appointment to the Kentucky Board of Physical Therapy. Four (4) contact hours shall be awarded per biennium;

(k)[~~(j)~~] Election or appointment to a position of the KPTA, APTA or Federation of State Boards of Physical Therapy (FSBPT) as an officer or committee chair. Four (4) contact hours shall be awarded per biennium; or

(l)[~~(k)~~] Member of a committee or task force for one (1) of the organizations in paragraph (j) or (k) of this subsection [~~Section 2(2) paragraph (i) or (j) of this administrative regulation~~]. One (1) contact hour shall be awarded per biennium.

(3) Category 2 continued competency shall be any of the following:

(a) Self-instruction from reading professional literature. One (1) contact hour shall be awarded per biennium;

(b) Attendance at a scientific poster session, lecture, panel or symposium. One (1) contact hour for each hour of activity. A maximum of two (2) contact hours shall be awarded per biennium;

(c) Clinical instructor for a CAPTE approved educational program. Continued competency shall be one (1) contact hour per sixteen (16) hours of student supervision;

(d) Participation in a physical therapy inservice or study group consisting of two (2) or more physical therapists or physical therapist assistants. A maximum of two (2) contact hours shall be awarded per biennium;

(e) Participation in community service related to health care. A maximum of two (2) contact hours Continued competency shall be awarded for two (2) hours per biennium; or

(f) Member of the APTA. One (1) contact hour shall be awarded per year and a maximum of two (2) contact hours per biennium;

(4) Documentation of compliance.

(a) Each licensee shall retain independently verifiable documentation of completion of all continued competency requirements of this administrative regulation for a period of three (3) years from the end of the biennium;

(b) The licensee shall, within thirty (30) days of a written request from the board, provide evidence of continued competency activities satisfactory to the board; and

(c) Any licensee who fails to provide evidence of the continued competency activities or who falsely certifies completion of continued competency activities may be subject to disciplinary action pursuant to KRS 327.070.

(5) Exemption and extension.

(a) A licensee may be granted a temporary hardship exemption for an extension of time, not to exceed one (1) renewal cycle, if the licensee:

1. Files a completed Extension of Time for Completion of Continuing Competency Form; and

2. Submits documentation showing evidence of undue hardship by reason of the licensee's:

a. Age;

b. Disability;

c. Medical condition;

d. Financial condition; or

e. Other clearly mitigating circumstance.

(b) A licensee may be granted a temporary nonhardship extension of time if the licensee cannot show undue hardship and if the licensee:

1. Files a completed Extension of Time for Completion of Continuing Competency Form by March 31 of the odd-numbered year in the renewal cycle for which the extension is sought;

2. Pays a fee of $250;

3. Has not received a temporary nonhardship extension of time in the prior renewal cycle; and

4. Files proof of compliance with the continuing competency requirements by the following July 1.

Section 3. Incorporation by Reference. (1) "Extension of Time for Completion of Continued Competency Form", 12/07, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable law, at the Kentucky Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Ky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

REBECCA E. KLUSCH, Executive Director

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 14, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2009 at 10 a.m. (EST) at 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2009. 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: Becky Klusch, Executive Director, Board of Physical Therapy, 312 Whittington Parkway Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502)429-7142.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Becky Klusch, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation assist in assuring safe and effective practices for the safety and welfare of the public by implementing continued competency.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS Chapter 327.040(10).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It provides the procedures for continued competency requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the procedures for renewal requirements for credential holders.

(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: It adds another category for educators to get credit for teaching.

(b) The necessity of the amendment to this administrative regulation. The necessity is to clarify the course approval process for continued competency requirements.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to set standards for licensing and renewal procedures.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the requirements of continued competency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 50.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The credential holders are required to show competency during the biennial renewal period and the amendment clarifies those requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to the entities in questions (3)

(c). As a result of compliance, what benefits will accrue to the entities identified in question (3): It will allow for credit to be given to educators.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no additional costs to the board.

(b) On a continuing basis: There will be no additional costs to the board.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Costs are minimal for implementing and enforcing this amendment and will be funded by licensure fees paid by licensees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not change the fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering does not apply in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Physical Therapy.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.040(10)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subse-

quent years? No new costs is anticipated.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:040. Standards of practice.

RELATES TO: KRS 324A 035, 324A.050(1)(j), 12 C.F.R. 225.62-225.67, 12 U.S.C. 3331, 3336, 3339

STATUTORY AUTHORITY: KRS 324A.035(3)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A 035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225 65 require that real estate appraisals in connection with federally-related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the standards of professional practice

Section 1. [~~A licensed nonfederal real property appraiser shall not be required to comply with the "Uniform Standards of Professional Appraisal Practice."~~

~~Section 2.~~] The following certificate holders or licensees shall comply with the "Uniform Standards of Professional Appraisal Practice" in effect at the time the services were performed.

(1) A certified general real property appraiser;

(2) A certified residential real property appraiser;

(3) A licensed real property appraiser; [~~and~~]

(4) An associate real property appraiser; and

(5) A licensed nonfederal real property appraiser.

Section 2. [~~3.~~] An appraisal report made with regard to a federally related transaction shall be in writing.

Section 3. [~~4.~~] The standard for the calculation and reporting of above-grade square footage and below-grade square footage in single-family houses shall be the "American National Standard for Single-Family Residential Buildings; Square Footage-Method for Calculating", ANSI Z765-2003, as approved by the American National Standards Institute, Inc.

Section 4. [~~5.~~] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Uniform Standards of Professional Appraisal Practice, 2008-2009 [~~2006~~] edition; and

(b) American National Standard for Single Family Residential Buildings; Square Footage Method for Calculating, ANSI Z765-2003.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2624 Research Park Drive, Suite 204, Lexington, Kentucky 40511, (859) 543-8943, Monday through Friday, 8 a.m to 4.30 p.m.

(3) This material may also be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Avenue, N W., Suite 900, Washington, D.C. 20005-3517, (202) 347-7722.

DORSEY HALL, Chair

APPROVED BY AGENCY: March 27, 2009

FILED WITH LRC: April 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2009 at 2 p.m., at 2624 Research Park Drive, Suite 204, Lexington, Kentucky. Individuals interested in attending 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 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 June 1, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 2624 Research Park Drive, Suite 204, Lexington, Kentucky, phone (859) 543-8943, fax (859) 543-0028.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the standards of practice for certified and licensed appraisers

(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the standards of practice required of certified and licensed appraisers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the standards of practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the standard of practice required from certificate holders.

(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 updates the reference to the 2008-2009 edition of the Uniform Standards of Professional Appraisal Practice and requires licensed non-federal real estate appraisers to comply with USPAP.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to specify the standards of practice for certificate holders.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary to administer the law.

(d) How the amendment will assist in the effective administration of the statutes: The standards of practice will assist by clearly identifying the practice required of certificate holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately one thousand five hundred persons certified by the board.

(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 certificate holders will be required to comply with the standards identified by this amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by certificate holders.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in

fees or funding will be required to implement the changes made by this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING. Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards This administrative regulation requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

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

(5) Justification for imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Real Estate Appraisers Board.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 324A 035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351.

4 Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-).

Other Explanation:

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:201. Recreational fishing limits.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.990

STATUTORY AUTHORITY: KRS 150.025, 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150 025 authorizes the department to promulgate administrative regulations to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. KRS 150 470 authorizes the department to promulgate creel and size limits for fish. EO 2008-516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism, Arts and Heritage Cabinet. This administrative regulation establishes fish size limits, daily catch limits, and field possession limits for fishing

Section 1. Definitions (1) "Artificial bait" means a lure or fly made of wood, metal, plastic, feathers, preserved pork rind, or a similar inert material[-

~~(a) Made of:~~

~~1. Wood,~~

~~2. Metal,~~

~~3. Plastic;~~

~~4. Feathers;~~

~~5. Preserved pork rind; or~~

~~6. A similar inert material, and~~

~~(b) Not having attached:~~

~~1. An insect;~~

~~2. Minnow;~~

~~3. Fish egg;~~

~~4. A worm;~~

~~5. Corn;~~

~~6. Cheese,~~

~~7. Cut bait, or~~

~~8. Similar organic bait substance including dough bait, putty or paste-type bait designed to attract fish by taste or smell~~]

(2) "Chumming" means placing substances in the water for the purpose of attracting fish to a particular area.

(3) "Cull" means to release a previously caught live fish that an angler has kept as a part of a [~~replace a live fish in the~~] daily creel limit and replace it with another fish of the same species.

(4) "Daily creel limit" [~~or "creel limit"~~] means the maximum number of a particular species or group of species a person may legally take in one (1) calendar day while fishing

(5) "Daylight hours" are defined by KRS 150.010(6).

(6) [~~"Kentucky bass" means the following with a patch of teeth on its tongue:~~

~~(a) Largemouth bass;~~

~~(b) Kentucky bass; or~~

~~(c) Coosa bass.~~

~~(7)~~] "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams[~~unless otherwise stated in Section 4 of this administrative regulation.~~

~~(8) "Length" means the distance of a fish which is measured while laid flat on a ruler with the mouth closed and tail lobes squeezed together~~].

(7)[~~(9)~~] "Possession limit" means the maximum number of unprocessed fish a person may hold after two (2) or more days of fishing

(8)[~~(10)~~] "Processed fish" means a fish that has been gutted and head removed.

(9)[~~(11)~~] "Recreational fishing" means the act of taking or attempting to take for personal use, and not for sale, any freshwater fish species by traditional fishing methods, including a line that is held in the hand or is attached to a rod that is held in the hand or closely attended, and to which one or more hooks are attached.

(10)[~~(12)~~] "Release" means to return a fish to the water from which it was taken immediately after removing the hook[:

~~(a) In the best possible physical condition;~~

~~(b) Immediately after removing the hook;~~

~~(c) To the water from which it was taken, and~~

~~(d) In a place where the fish's immediate escape shall not be prevented~~

~~(13) "Seasonal catch and release for trout season" means a trout stream with a specific time period when no trout shall be harvested or possessed and where the use of artificial bait is the only bait permitted~~].

(11)[~~(14)~~] "Single hook" means a hook with no more than one (1) point.

(12)[~~(15)~~] "Size limit" means the minimum legal length of a fish that is measured by laying the fish flat on a ruler with the mouth closed and tail lobes squeezed together.

(13)[~~(16)~~] "Slot limit" means a minimum and maximum size limit that requires a fish of that size range to be released.

(14)[~~(a) Shall release fish within a specified minimum and maximum size, and~~

~~(b) May keep fish above and below the protected size range.~~

~~(17)~~] "Unprocessed fish" means the whole fish prior to being processed.

Section 2. Statewide Size Limits, Daily Creel Limits, and Possession Limits. (1) Except as established in Section 4 of this administrative regulation or by 301 KAR 1:180, a person fishing in public or private waters shall observe the following daily and size limits. The possession limit shall be two (2) times the daily creel limit unless otherwise specified in Section 4 of this administrative regulation.

(a) Black bass: daily creel limit, six (6).

1. Largemouth bass and smallmouth bass: size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass: no size limit.

(b) Rock bass: daily creel limit, fifteen (15).

(c) Sauger, walleye, and their hybrids: daily creel limit, singly or in combination, six (6); size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger.

(d) Muskellunge: daily creel limit, one (1);[,] size limit, thirty (30) inches.

(e) Chain pickerel: daily creel limit, five (5); no size limit.

(f) White bass and[,] hybrid striped bass[~~, and yellow bass,~~] singly or in combination: daily creel limit, fifteen (15), size limit, no more than five (5) fish in a daily creel limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(g) Striped bass: daily creel limit, five (5); [~~daily and possession limit, five (5),~~] size limit, fifteen (15) inches.

(h) Crappie daily creel limit, thirty (30); no size limit.

(i) Rainbow trout and brown trout, singly or in combination: daily limit, eight (8), no more than three (3) of which shall be brown trout, no size limit on rainbow trout; twelve (12) inch size limit on brown trout.

(j) Redear sunfish: daily creel limit,[,] twenty (20); no size limit.

(k) Yellow bass: daily creel limit, thirty (30); no size limit

(2) A person shall release grass carp caught from a lake owned or managed by the department

(3) A person shall release lake sturgeon.

(4) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species, if a person possesses the daily creel limit for that species established by this administrative regulation

(5) A person shall not possess more than one (1) daily creel limit of processed or unprocessed fish while fishing, on the shoreline, or while on the water except that:

(a) Fishing tournament organizers and their representatives, excluding the tournament anglers, may have over the daily creel limit of tournament caught fish:

1. At the weigh-in site;

2. At the release site, or

3. When transporting live fish from a remote weigh-in site back to the water body of origin for release.

(b) Fishing tournament organizers and their representatives, excluding the tournament anglers, may have over the daily creel limit of unprocessed tournament caught fish that expired at the sites established in paragraph (a) of this subsection for disposal by one (1) of the following methods:

1. Bagged, sealed, and placed in a garbage dump;

2. Given to a charity for the purposes of human consumption; or

3. Transferred to a conservation officer or to another agent of the department

(6) Any part of the head or tail of a fish with a size or daily creel limit shall not be removed while fishing, on the shoreline, ~~or while~~ on the water.

(7) A person who wishes to possess sport fish below the size limit or beyond the possession limit shall:

(a) Obtain the fish from a licensed fish propagator or other legal source; and

(b) Retain a receipt or other written proof that the fish were legally acquired.

(8) All trout shall be released unless a person:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements by KRS 150.170(3); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

operator.

(9) A person fishing in an artificial bait-only area shall not attach any of the following items to the artificial bait

(a) An insect;

(b) Minnow;

(c) Fish egg;

(d) A worm;

(e) Corn;

(f) Cheese;

(g) Cut bait; or

(h) Similar organic bait substance including dough bait, putty or paste-type bait designed to attract fish by taste or smell.

Section 3. Fishing Season. The fishing season shall be open year round

Section 4. Exceptions to Statewide Administrative Regulations. A person fishing in the waters listed in this section shall observe the following special requirements. Except as specified in this section, all other provisions of this administrative regulation shall apply to these bodies of water.

(1) Bad Branch, Letcher County. A person shall not fish except with an artificial bait with a single hook.

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches; daily creel limit, twenty (20).

(c) Sauger: size limit, fourteen (14) inches.

(3) Barren River Lake shall extend up:

(a) Barren River to the Highway 100 bridge;

(b) Long Creek to the Highway 100 bridge;

(c) Beaver Creek to the Highway 1297 bridge;

(d) Skaggs Creek to the Mathews Mill Road bridge; and

(e) Peter Creek to the Peter Creek Road bridge:

1. Crappie. size limit, nine (9) inches.

2. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily creel limit may contain one (1) bass under[~~. Daily limit may include no more than one (1) fish less than~~] fifteen (15) inches.

(4) Beaver Lake, Anderson County.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Channel catfish. size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(5) Bert Combs Lake, Clay County. A person shall not possess shad or use shad for bait.

(6) Beshears Lake, Caldwell County. Channel catfish: size limit, twelve (12) inches.

(7) Boltz Lake, Grant County.

(a) A person shall not possess shad or use shad for bait.

(b) Channel catfish: size limit, twelve (12) inches.

(8) Briggs Lake, Logan County A person shall not possess shad or use shad for bait.

(9) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Muskellunge: size limit, thirty-six (36) [~~forty (40)~~] inches.

(c) Crappie size limit, nine (9) inches.

(10) Bullock Pen Lake, Grant County. Cannel catfish: size limit, twelve (12) inches.

(11) Carnico Lake, Nicholas County. Largemouth bass: size limit, fifteen (15) inches.

(12) Carpenter Lake, Daviess County. A person shall not possess shad or use shad for bait.

(13) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(14) Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass: no size limit.

(c) A person shall not possess shad or use shad for bait.

(15) Cave Run Lake

(a) Largemouth bass: slot limit - a person shall release fish between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass: size limit, eighteen (18) inches.

(c) Muskellunge: size limit, thirty-six (36) inches.

(16) Cedar Creek Lake, Lincoln County.

(a) Largemouth bass: size limit, twenty (20) inches; daily creel limit, one (1).

(b) Channel catfish. size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait

(17) Chimney Top Creek, Wolfe County. Brown trout: size limit, sixteen (16) inches; daily creel limit, one (1), artificial bait only.

(18) Corinth Lake, Grant County.

(a) A person shall not possess shad or use shad for bait.

(b) Channel catfish. size limit, twelve (12) inches.

(19) Cumberland Lake shall extend up:

(a) The Cumberland River to Cumberland Falls;

(b) The Big South Fork to Devils Jump;

(c) The Rockcastle River to The Narrows; and

(d) The Laurel River to Laurel River Dam:

1. Largemouth: size limit, fifteen (15) inches.

2. Smallmouth bass: size limit, eighteen (18) inches.

3. Striped bass: size limit, twenty-four (24) inches; daily creel limit, two (2).

4. Crappie: size limit, ten (10) inches.

(20) Cumberland River downstream from Barkley Lake Dam. Sauger: size limit, fourteen (14) inches.

(21) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries.

(a) Brown trout: size limit, twenty (20) inches; daily creel limit (no cull), one (1).

(b) Rainbow trout: slot limit - a person shall release fish between fifteen (15) and twenty (20) inches. Daily creel limit with no cull [~~(no cull)~~], five (5), which shall not include more than one (1) fish greater than twenty (20) inches.

(c) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(d) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(22) Dale Hollow Lake.

(a) Smallmouth bass: slot limit - a person shall release fish between sixteen (16) and twenty-one (21) inches. The daily creel limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and its hybrids: daily creel limit, five (5); size limit, sixteen (16) inches.

(c) Sauger: daily creel limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and lake trout

1. Daily creel limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout.

2. Daily creel limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches

(e) Largemouth bass: size limit, fifteen (15) inches.

(f) Black bass: aggregate daily creel limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie: size limit, ten (10) inches; daily creel limit, fifteen (15).

(23) Dewey Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(24) Dix River for two (2) miles downstream from Herrington Lake Dam. A person shall not fish except with an artificial bait.

(25) Doe Run Lake, Kenton County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(c) A person shall not possess shad or use shad for bait.

(26) Dog Fork, Wolfe County A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(27) Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. The daily creel limit shall not include more than two (2) fish greater than sixteen (16) inches.

(28) Elmer Davis Lake, Owen County.

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(29) Fishtrap Lake.

(a) Largemouth bass and smallmouth bass. size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(30) Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish: daily limit, five (5); size limit, fifteen (15) inches.

(31) General Butler State Park Lake, Carroll County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(c) A person shall not possess shad or use shad for bait.

(32) Grayson Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(33) Greenbo Lake, Greenup County.

(a) A person shall not possess shad or use shad for bait.

(b) Bluegill and sunfish. daily and possession limit, fifteen (15) fish.

(34) Green River Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Muskellunge: size limit, thirty-six (36) inches.

(35) Guist Creek Lake, Shelby County. Channel catfish. size limit twelve (12) inches.

(36) Jerrico Lake, Henry County.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

(37) Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches; daily limit, twenty (20).

(c) Sauger: size limit, fourteen (14) inches.

(38) Kincaid Lake, Pendleton County. Channel catfish: size limit, twelve (12) inches.

(39) Lake Blythe, Christian County Largemouth bass slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(40) Lake Malone, Muhlenburg and Logan County.

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(41) Lake Mingo, Jessamine County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3)

(b) Channel catfish: daily creel limit, four (4).

(c) A person shall not possess shad or use shad for bait.

(42) Lake Pollywog, Grant County.

(a) Largemouth bass: size limit, fifteen (15) inches, daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(c) A person shall not possess shad or use shad for bait

(43) Lake Reba, Madison County.

(a) Largemouth bass and smallmouth bass: size limit, fifteen

(15) inches; daily creel limit three (3).

(b) A person shall not possess shad or use shad for bait.

(44) Lake Shelby, Shelby County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(c) A person shall not possess shad or use shad for bait.

(45) Laurel River Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Smallmouth bass: size limit, eighteen (18) inches; daily creel limit, two (2).

(c) Crappie: size limit, nine (9) inches; daily creel limit, fifteen (15).

(46) Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(47) Leary Lake, Grant County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(c) Channel catfish: daily limit, four (4).

(48) Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3)[~~; size limit, fifteen (15) inches~~].

(c) Channel catfish: daily creel limit, four (4).

(d) A person shall not possess shad or use shad for bait.

(49) Marion County Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

(50) McNeely Lake, Jefferson County. A person shall not possess shad or use shad for bait.

(51) Mill Creek Lake, Powell County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) A person shall not possess shad or use shad for bait.

(52) New Haven Optimist Lake, Nelson County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(c) A person shall not possess shad or use shad for bait.

(53) Nolin River Lake shall extend up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(54) Ohio River.

(a) Walleye, sauger,[-] and their hybrids: no size limit; daily creel limit, ten (10),[-] singly or in combination.

(b) White bass, yellow bass, striped bass and their hybrids: daily creel limit, thirty (30), no more than four (4) in the daily creel limit shall be fifteen (15) inches or greater.

(55) Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout: size limit, sixteen (16) inches; daily creel limit, one (1); artificial bait only.

(56) Paintsville Lake.

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(b) Smallmouth bass: size limit, eighteen (18) inches.

(57) Parched Corn Creek, Wolfe County. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(58) Pennyrile Lake, Christian County. Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(59) Pikeville City Lake, Pike County. Catch and release largemouth bass fishing (no harvest).

(60) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(61) Rough River Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches, except that the daily creel limit may contain one (1) bass under fifteen (15) inches.

(62) Shanty Hollow Lake, Warren County.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(63) Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(64) Sportsman's Lakes, Franklin County.

(a) A person shall not possess shad or use shad for bait.

(b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3).

(c) Channel catfish: daily creel limit, four (4).

(65) Spurlington Lake, Taylor County. A person shall not possess shad or use shad for bait.

(66) Sympson Lake, Nelson County. Largemouth bass: size limit, fifteen (15) inches.

(67) Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches; daily creel limit, fifteen (15).

(68) Taylorsville Lake WMA ponds, Spencer County (as designated).

(a) Largemouth bass: size limit, fifteen (15) inches; daily creel limit, three (3).

(b) Channel catfish: daily creel limit, four (4).

(69) Tennessee River downstream from Kentucky Lake Dam. Sauger: size limit, fourteen (14) inches.

(70) Wood Creek Lake. Largemouth and smallmouth bass: size limit, fifteen (15) inches.

(71) Yatesville Lake: Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be a seasonal catch and release for trout season from October 1 - March 31.

(2) A person shall use artificial bait and release trout.

(3) The following streams shall be open to the seasonal catch and release for trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) [~~East Fork Clarks River from Bee Creek upstream to Old Salem Road Bridge in Calloway County;~~

~~(h)~~] East Fork of Indian Creek in Menifee County;

(h)[~~(i)~~] Elk Spring Creek in Wayne County;

(i)[~~(j)~~] Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(j)[~~(k) Lick Creek in Simpson County;~~

~~(l)~~] Middle Fork of Red River in Natural Bridge State Park in Powell County;

(k)[~~(m)~~] Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park; and

(l)[~~(n)~~] Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County.

(4) The seasonal catch and release for trout season for Swift Camp Creek in Wolf County shall be October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Daily creel limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) Event sponsors shall post signs informing anglers of the special limits a minimum of twenty-four (24) hours before the event.

BENJY KINMAN, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
MARCHETA SPARROW, Secretary
APPROVED BY AGENCY: April 10, 2009
FILED WITH LRC: April 14, 2009 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2009, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by 5 business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made available 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 by June 1, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes size limits, daily creel limits, and possession limits for sport fish that may be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the sport fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department to promulgate administrative regulations to regulate bag, creel, and possession limits of game and fish.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by limiting the number and size of fish that may be taken from Kentucky's waters. This will ensure that Kentucky's valuable sport fish populations are maintained at their highest levels.

(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 removes the tooth patch regulation as a method of identifying spotted bass, establishes a no size limit and 30 fish daily creel on yellow bass, establishes a 36-inch size limit on muskellunge on Green River, Cave Run and Buckhorn lakes, establishes a 9-inch size limit on crappie at Fishtrap Lake, and removes East Fork Clarks River and Lick Creek from the list of seasonal catch and release streams.

(b) The necessity of the amendment to this administrative regulation: This amendment removes the presence of a tooth patch as the legal separation between largemouth and spotted bass. It will help alleviate the inadvertent harvest of sub-legal largemouth bass due to misidentification with spotted bass, a species without a protective size limit. This change will allow anglers to harvest additional yellow bass that were overprotected with the aggregate limit. The increase in the muskellunge size limit will increase the trophy potential of this species at the three lakes where they are stocked. The 9-inch size limit on crappie will reduce the over harvest of small crappie and will increase the availability of larger fish for anglers. East Fork Clarks River and Lick Creek have been removed from the protective seasonal catch and release status for trout due to the low angler use of these protective areas.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who fish for bass across Kentucky, anglers that fish for yellow bass in waters where they are present, musky anglers that fish at Green River, Cave Run, and Buckhorn lakes, anglers fishing for crappie at Fishtrap Lake, and trout anglers who fish the seasonal catch and release trout fisheries at Lick Creek and East Fork Clarks River.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers who wish to harvest spotted bass must now use external characteristics to identify spotted bass and those are provided in artist drawings in our Kentucky Fishing and Boating Guide. Anglers fishing for yellow bass may now harvest 30 fish daily compared to the previous 15 daily creel limit. Muskellunge anglers fishing at Green River, Cave Run, and Buckhorn Lake will now be able to harvest muskellunge that exceed 36 inches. Anglers fishing for crappie at Fishtrap Lake will now be restricted to harvest crappie that are 9 inches or larger. Trout anglers in East Fork Clarks River and Lick Creek will no longer be able to fish for trout in those waters during a protective seasonal catch and release season

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) There will be no cost incurred by of the anglers identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Additional quality-sized largemouth bass will potentially be available since additional sub-legal largemouth bass will be protected. Anglers will be able to harvest 30 yellow bass daily instead of a maximum of 15. At Green River, Cave Run, and Buckhorn lakes, muskellunge must be at least 36 inches before they can be harvested. This will eventually result in more larger-sized muskellunge for anglers to harvest. Crappie anglers at Fishtrap will now be harvesting a larger sized fish. Trout will continue to be stocked in Lick Creek (Simpson County) and will be available for harvest without the protective catch and release provisions during the winter. Trout stocked in the East Fork Clarks River (Calloway County) will be reallocated to a city park for better utilization of a stocked fish.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals fishing in Kentucky were treated equally with these amendments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program,

service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the Department to promulgate administrative regulations necessary to establish fishing guidelines to protect fish from being over harvested. KRS 150.470 authorizes the department to promulgate creel and size limits for fish.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No direct revenues will be generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No direct revenues will be generated in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer the program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-).
Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 5:002. Definitions for 401 KAR Chapter 5.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. [~~Parts~~] 35, 116, 130, 131, 136, 401-471, 15 U.S.C. 2601 – 2629[~~et seq.~~], 33 U.S.C. 1251 – 1387[~~et seq.~~], 42 U.S.C. 6901 – 7000[~~et seq.~~], 7401 – 7671q[~~et seq.~~], 9601, 11023, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.16-060, 224.70-110, 40 C.F.R. [~~Parts~~] 116, 130, 131, 136, 401-471, 15 U.S.C. 2601 – 2629[~~et seq.~~], 33 U.S.C. 1251 – 1387, EO 2008-507, 2008-531[~~et seq.~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the [~~Environmental and Public Protection~~] cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet[~~This administrative regulation and 401 KAR 5:026, 401 KAR 5:029, 401 KAR 5:030, and 401 KAR 5:031 establish procedures to protect the surface waters of the commonwealth, and thus protect water resources. 401 KAR Chapter 5 establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the commonwealth~~]. This administrative regulation establishes definitions for terms [~~and acronyms, abbreviations, and symbols~~] used in 401 KAR Chapter 5. These definitions are not[~~, relating to the issuance of these permits. If applicable, these definitions are the same as definitions used for the federal National Pollutant Discharge Elimination System program in 40 C.F.R. Parts 116, 136, 401 – 471, and the planning requirements in 40 C.F.R. Part 130. There are no definitions that are~~] more stringent than the federal counterparts[~~federal requirements~~].

Section 1. Definitions. (1) [~~"Act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.~~

~~(2)~~] "Activity" means, in 401 KAR 5:050 through 401 KAR 5:080[~~for purposes of 401 KAR 5:050 to 401 KAR 5:080~~] and if used in conjunction with "facility"[~~facility~~], a[~~any~~] KPDES point source, or[~~any~~] other activity, including land or related appurtenances[~~thereto~~], that is subject to regulation under the KPDES program.

(2)[~~(3) "Acute-chronic ratio" means the ratio of the acute toxicity, expressed as an LC_{50}, of an effluent or a toxic substance, to its chronic toxicity. It is used as a factor to estimate chronic toxicity from acute toxicity data.~~

~~(4) "Acute criteria" means the highest instream concentration of a toxic substance or an effluent to which an organism can be exposed for a brief period of time without causing an unacceptable harmful effect.~~

~~(5) "Acute toxicity" means lethality or other harmful effect sustained by either an indigenous aquatic organism or a representative indicator organism used in a toxicity test, due to a short term exposure, of ninety six (96) hours or less, to a specific toxic substance or mixture of toxic substances.~~

~~(6) "Acute toxicity unit" means the reciprocal of the effluent dilution that causes the acute effect, or LC_{50}, by the end of the acute exposure period.~~

~~(7)~~] "Administrator" means the administrator of the United States Environmental Protection Agency or the administrator's authorized representative.

(3)[~~(8) "Adversely affect" or "adversely change" means, for purposes of 401 KAR 5:026 through 401 KAR 5:031, to alter or change the community structure or function, to reduce the number or proportion of sensitive species, or to increase the number or proportion of pollution tolerant aquatic species so that aquatic life use support or aquatic habitat is impaired.~~

~~(9)~~] "Agricultural wastes handling system" means a [~~no discharge~~] structure or equipment that conveys, stores, or treats manure from an animal feeding operation prior to land application.

(4)[~~(10)~~] "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of a[~~any~~] discharge that is[~~which are~~] established under 401 KAR 5:055.

(5)[~~(11)~~] "Animal feeding operation" or "AFO" means[~~, for purposes of 401 KAR 5:005 and 401 KAR 5:050 to 401 KAR 5:080,~~] a lot or facility, that meets one (1) of the following descriptions[~~other than an aquatic animal production facility, where the following conditions are met~~]:

(a)1. "Large animal feeding operation" as defined in subsection (71) of this section; or

2. "Medium animal feeding operation" as defined in subsection (83) of this section; and

(b) If:

1.a. Animals other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in a[~~any~~] twelve (12) month period; and

b.[~~2.~~] Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

2.[~~(b)~~] Two (2) or more animal feeding operations under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(6)[~~(12) "Animal unit" means, for purposes of 401 KAR 5:005 and 401 KAR 5:050 to 401 KAR 5:080, the unit of measurement for any animal feeding operation, calculated according to the following equation:~~

~~Animal Unit = $(N_1 \times 1.0) + (N_2 \times 1.4) + (N_3 \times 0.4) + (N_4 \times 0.1) + (N_5 \times 2.0)$~~

~~Where:~~

~~N_1 = Number of slaughter and feeder cattle;~~

~~N_2 = Number of mature dairy cattle;~~

~~N_3 = Number of swine weighing over twenty-five (25) kg;~~

~~N_s = Number of sheep; and~~

~~N_h = Number of horses.~~

~~(13)~~] "Applicable standards and limitations" means all standards and limitations to which a discharge or a related activity is subject pursuant to[~~under~~] KRS Chapter 224[~~,~~] and 401 KAR Chapters 4 through 11[~~administrative regulations promulgated pursuant thereto~~], including effluent limitations, water quality standards, standards of performance, or[~~and~~] toxic effluent standards.

(7)[~~(14)~~] "Application" means the document submitted by an applicant to the cabinet that[~~which~~] provides information used by the cabinet in the issuance of a permit or approval

~~(8)[The application may have several different forms, depending on the type of permit which is requested. The specific forms are required in the applicable administrative regulation.~~

~~(15)~~] "Approved POTW pretreatment program", "POTW pretreatment program", "pretreatment program", or "program" means a program administered by a POTW that meets the criteria established in 401 KAR 5:057 and that[~~which~~] has been approved by the cabinet.

(9)[~~(16)~~] "Aquaculture project" means a defined managed water area that[~~which~~] uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater plants or[~~and~~] animals.

(10)[~~(17) "Area of review" means a fixed radius around a facility of not less than one-fourth (1/4) mile.~~

~~(18) "Arithmetic mean for seven (7) consecutive days" means the average of a minimum of two (2) samples taken on separate days in a seven (7) day period.~~

~~(19) "Arithmetic mean for thirty (30) consecutive days" means the average of a minimum of three (3) samples collected in separate calendar weeks during a period of thirty (30) consecutive days with a minimum of twenty (20) days occurring between the first and last sample days.~~

~~(20) "Association of Boards of Certification" or "ABC" means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of water supply and wastewater systems, and assists authorities in establishing new certification programs and upgrading existing programs.~~

~~(21)~~] "Available" means located within the planning area and.

(a) Located within one and zero-tenths (1.0) mile of a regional facility for a WWTP[~~WWTPs~~] with an average daily design capacity larger than 1,000 gpd[~~. The distance shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow~~]; or

(b) For new construction if the distance is one and zero-tenths (1.0) mile or more, where it is cost-effective to connect as determined by a twenty (20) year present worth cost analysis.

(11)[~~(22) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.~~

~~(23) "Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.~~

~~(24) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and a lack of domination by pollution tolerant species. The community may include historically nonnative species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modification. Normally, however, such a community does not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance of all sources with 401 KAR 5:065, and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to 401 KAR 5:055.~~

~~(25) "Barrel" means forty-two (42) U.S. gallons.~~

~~(26)~~] "BAT" means best available technology economically achievable.

(12)[~~(27) "BCT" means best conventional pollutant control technology.~~

~~(28)~~] "Best management practices" or "BMPs" means:

(a) For agriculture operations, as defined by KRS 224.71-100(3), or

(b) For all other purposes:

1.[~~, for purposes other than agriculture operations,~~] Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the commonwealth; and

2. [~~BMPs also include~~] Treatment requirements, operating procedures, practices to control site run-off, pollution of surface water and groundwater from nonpoint sources, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(13)[~~(29)~~] "Biochemical oxygen demand", "BOD", or "BOD_5" means the amount of oxygen required to stabilize biodegradable organic matter under aerobic conditions within a five (5) day period. Other time periods may be measured, and if so, are indicated where the term is used.

(14)[~~(30) "BMPs" means best management practices.~~

~~(31) "Board" means the Kentucky Board of Certification of Wastewater System Operators, as established by KRS 224.73-110.~~

~~(32) "BOD" or "BOD_5" means biochemical oxygen demand.~~

~~(33)~~] "BPT" means best practicable technology currently available

(15)[~~(34) "Building drain" means that part of the lowest piping of the drainage system which receives the discharge from plumbing fixtures and other interior drainage pipes and conveys its discharge to the building sewer which begins two (2) feet outside the building wall.~~

~~(35)~~] "Building sewer" means that part of the drainage system that[~~which~~] extends from the end of the building drain, beginning two (2) feet outside the building wall, and conveys its discharge to a downstream manhole, sewer line, pump station, or sewage disposal system.

(16)[~~(36)~~] "Bypass" means the intentional diversion of sewage or waste-streams from a portion of a facility or industrial user's treatment facility.

(17)[~~(37) "°C" means degrees Celsius.~~

~~(38) "CAH" means cold water aquatic habitat.~~

~~(39)~~] "Carbonaceous biochemical oxygen demand" or "CBOD" means BOD, not including the nitrogenous oxygen demand of the wastewater.

(18)[~~(40) "Cation exchange capacity" or "CEC" means the measure of the ability of a soil to retain cations in a form available for uptake by plants. CEC is expressed in milliequivalents per 100 grams of soil.~~

~~(41) "CBOD" means carbonaceous biochemical oxygen demand.~~

~~(42) "CEC" means cation exchange capacity.~~

~~(43) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended at 42 U.S.C. 9601 et seq.~~

~~(44) "Certificate" means the certificate of competency issued by the secretary or the secretary's designated agent stating that the operator has met the requirements for the specified operator classification as set by 401 KAR 5:010.~~

~~(45)~~] "Certified operator" means an individual who holds an active certified operator's certificate issued in accordance with 401 KAR 11:050[~~a wastewater operator employed at a wastewater system who has primary responsibility for the system or a portion thereof which may affect the performance of the system and who holds a certificate of competency meeting the requirements of 401 KAR 5:010~~].

(19)[~~(46)~~] "cfm" means cubic feet per minute.

(20)[~~(47) "C.F.R." means Code of Federal Regulations.~~

~~(48) "Chronic criteria" means the highest instream concentration of a toxic substance or an effluent to which organisms can be exposed indefinitely without causing an unacceptable harmful effect.~~

~~(49)~~] "Chronic toxicity" means lethality, reduced growth or reproduction or other harmful effect sustained by either indigenous

aquatic organisms or representative indicator organisms used in toxicity tests due to long-term exposures, relative to the life span of the organisms or a significant portion of their life span, to toxic substances or mixtures of toxic substances.

(21)[~~(50) "Chronic toxicity unit" means the reciprocal of the effluent dilution that causes twenty-five (25) percent inhibition of growth or reproduction to the test organisms by the end of the chronic exposure period.~~

~~(51) "Clean Water Act" or "CWA" means the Clean Water Act as subsequently amended (33 U.S.C. Section 1251 et seq.), otherwise known as the Federal Water Pollution Control Act.~~

~~(52) "Coal remining operation" means a surface coal mining operation which begins after July 11, 1990, at a site on which a coal mining operation was conducted before August 3, 1977. It also means a surface coal mining operation existing on July 11, 1990, which receives a permit revision from the Department for Surface Mining Reclamation and Enforcement (DSMRE) in accordance with 405 KAR 8:010, Section 20 for a site on which a coal mining operation was conducted before August 3, 1977.~~

~~(53) "COD" means chemical oxygen demand.~~

~~(54) "Cold water aquatic habitat" or "CAH" means surface waters and associated substrate that will support indigenous aquatic life or self-sustaining or reproducing trout populations on a year-round basis.~~

~~(55)~~] "Combined sewer" or "combined sewer line" means a sewer or sewer line designed to carry storm water runoff as well as sanitary wastewater.

(22)[~~(56)~~] "Combined sewer overflow" or "CSO" means the flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a POTW.

(23)[~~(57) "Composite sample" means.~~

~~(a) Not less than four (4) effluent portions collected at regular intervals over a period of eight (8) hours and combined in proportion to flow;~~

~~(b) Not less than four (4) combined equal volume effluent portions collected over a period of eight (8) hours at intervals proportional to flow;~~

~~(c) An effluent portion collected continuously over a period of twenty-four (24) hours at a rate proportional to the flow; or~~

~~(d) An effluent portion consisting of a minimum of four (4) combined equal volume grab samples taken approximately two (2) hours apart.~~

~~(58)~~] "Concentrated animal feeding operation" means one (1) of the following[~~, for purposes of 401 KAR 5:005 and 401 KAR 5:050 to 401 KAR 5:080, an animal feeding operation where~~]:

(a) "Large concentrated animal feeding operation" as defined in subsection (72) of this section;

(b) "Medium concentrated animal feeding operation" as defined in subsection (84) of this section; or

(c) "Small concentrated animal feeding operation" as defined in subsection (150) of this section.

(24)[~~More than the following numbers of indicated animals are confined:~~

~~1. 1,000 slaughter and feeder cattle;~~

~~2. 700 mature dairy cattle, whether milked or dry cows;~~

~~3. 2,500 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);~~

~~4. 500 horses;~~

~~5. 10,000 sheep or lambs;~~

~~6. 55,000 turkeys;~~

~~7. 100,000 laying hens or broilers if the facility has continuous overflow watering;~~

~~8. 30,000 laying hens or broilers if the facility has a liquid manure system;~~

~~9. 5,000 ducks; or~~

~~10. 1,000 animal units; or~~

~~(b)1. More than the following number and types of animals are confined:~~

~~a. 300 slaughter or feeder cattle;~~

~~b. 200 mature dairy cattle, whether milked or dry cows;~~

~~c. 750 swine each weighing over twenty-five (25) kilograms (approximately fifty-five (55) pounds);~~

~~d. 150 horses;~~

~~e. 3,000 sheep or lambs;~~

~~f. 16,500 turkeys;~~

~~g. 30,000 laying hens or broilers if the facility has continuous overflow watering;~~

~~h. 9,000 laying hens or broilers if the facility has a liquid manure system;~~

~~i. 1,500 ducks; or~~

~~j. 300 animal units; and~~

~~2. Either pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into waters of the commonwealth which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.~~

~~(c) If an animal feeding operation discharges only during a twenty-five (25) year, twenty-four (24) hour storm event or greater, the animal feeding operation shall not be considered to be a concentrated animal feeding operation.~~

~~(59) "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in 401 KAR 5:060 or which the cabinet designates under 401 KAR 5:060.~~

~~(60)~~] "Consolidation sewer" means a conduit, without direct sanitary connections that[~~which~~] intercepts and transports combined sewer storm overflows to a treatment facility or a single combined sewer overflow point.

(25)[~~(61)~~] "Continuous facility discharge" means a discharge that[~~which~~] occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(26)[~~(62) "Control authority" means the POTW if the POTW has an approved pretreatment program or the cabinet if the POTW does not have an approved pretreatment program.~~

~~(63) "Conventional domestic water supply treatment" means or includes coagulation, sedimentation, filtration, and chlorination.~~

~~(64)~~] "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, or[~~and~~] phosphorus.

(27)[~~(65) "Copermittee" means a permittee to a KPDES permit that is only responsible for the permit conditions relating to the discharge for which it is the operator.~~

~~(66)~~] "Criteria" means specific concentrations or ranges of values, or narrative statements of water constituents that[~~which~~] represent a quality of water expected to result in an aquatic ecosystem protective of designated uses of surface waters. Criteria are derived to protect legitimate uses such as aquatic life, domestic water supply, and recreation and to protect human health.

(28)[~~(67) "CSO" means combined sewer overflow.~~

~~(68) "CWA" means the Clean Water Act, as amended.~~

~~(69) "Daily discharge" means the discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.~~

~~(70)~~] "Date of program approval" means September 30, 1983, the effective date of the administrator's approval of Kentucky's KPDES regulatory program pursuant to[~~under CWA Section 402,~~] 33 U.S.C. Section 1342.

(29)[~~(71)~~] "Day" means a twenty-four (24) hour period.

(30) "Design flow" means the long-term daily average flow the wastewater treatment plant can treat and remain in compliance with the overall performance requirements during its design life.

(31)[~~(72) "Designated project area" means the portions of the waters of the commonwealth within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation, including, but not limited to, physical confinement, which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the~~

~~discharge of pollutants, and be harvested within a defined geographic area.~~

~~(73)~~] "Direct discharge" means the discharge of a pollutant into waters of the commonwealth if the discharge is not included under the definition of indirect discharger and[~~, but~~] does not include a discharge of animal waste onto land by land application if the discharge does not reach the waters of the commonwealth.

(32)[~~(74)~~] "Disappearing stream" means an intermittent or perennial surface stream that terminates and drains underground through caves, fractures, or swallets in the stream bed.

(33)[~~(75)~~] "Discharge" or "discharge of a pollutant" means the[~~any~~] addition of a[~~any~~] pollutant or combination of pollutants to waters of the commonwealth from a[~~any~~] point source.

(34)[~~This definition includes, but is not limited to, additions of pollutants into waters of the commonwealth from surface run-off which is collected or channeled by human effort, discharges through pipes, sewers or other conveyances whether publicly or privately owned which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.~~

~~(76)~~] "Discharge monitoring report" or "DMR" means the report including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by KPDES permittees.

(35)[~~(77) "Disposal well" means a borehole drilled or proposed to be drilled, or a well converted to be used, for the sole purpose of disposing of any water, gas, produced water, or other fluid by injection or other method into a subsurface zone.~~

~~(78)~~] "Division" means the Kentucky Division of Water, within the Department for Environmental Protection, Energy and Environment[~~Environmental and Public Protection~~] Cabinet.

(36)[~~(79) "DMR" means discharge monitoring report.~~

~~(80)~~] "Domestic" means relating to household wastes or other similar wastes. It is used to distinguish municipal, household, or commercial water or wastewater services from industrial water or wastewater services.

(37)[~~(81)~~] "Domestic sewage" means sewage devoid of industrial or other wastes and which is typical of waste received from residential facilities. It may include wastes from commercial developments, schools, restaurants, and other similar developments.

(38)[~~(82) "Domestic water supply" or "DWS" means surface waters that with conventional treatment are suitable for human consumption through a public water system as defined in 401 KAR 8:010, culinary purposes, or for use in any food or beverage processing industry, and meet state and federal regulations under the Safe Drinking Water Act, as amended, 42 U.S.C. 300f – 300j.~~

~~(83)~~] "Draft permit" means a document prepared pursuant to[~~under~~] 401 KAR 5:075 indicating the cabinet's preliminary decision to issue or deny, modify, revoke and reissue, revoke, or reissue a permit. It includes a notice of intent to revoke a permit and a notice of intent to deny a permit as provided in 401 KAR 5:075. It does not include a proposed permit; a denial of a request for modification, revocation, and reissuance; or a denial of a request for revocation.

(39)[~~(84) "Drilling pit" means an earthen excavation for the collection of fluids associated with the drilling, construction, completion, acidizing, or fracturing of an oil or gas well.~~

~~(85) "Dry gas well" means a gas well producing one (1) barrel or less of produced water at maximum production conditions during a given twenty-four (24) hour period.~~

~~(86) "DWS" means domestic water supply.~~

~~(87)~~] "Effluent ditch" means that portion of a treatment system that[~~which~~] is a discrete, person-made conveyance, either totally owned, leased or under valid easement by the discharger that[~~which~~] transports a discharge to surface waters of the commonwealth.

(40)[~~(88) "Effluent lagoon" means a treatment lagoon.~~

~~(89)~~] "Effluent limitation" is defined by[~~at~~] KRS 224.01-010(12).

(41)[~~(90)~~] "Effluent limitations guideline" means a federal regulation published by the administrator pursuant to[~~under CWA Section 304(b),~~] 33 U.S.C. [~~Section~~] 1314(b) to adopt or revise technology-based effluent limitations.

~~(42)[(91) "Engineer" is defined by KRS 322.010(2).~~

~~(92) "Enhanced recovery well" means a well used for the injection of fluids to improve or maintain reservoir productivity.~~

~~(93)~~] "Environmental Protection Agency" or "EPA" means the U.S.[~~United States~~] Environmental Protection Agency.

~~(43)[(94) "Epilimnion" means the thermally homogeneous water layer overlying the metalimnion of a thermally stratified lake or reservoir.~~

~~(95)~~] "E. coli" or "Escherichia coli" means an aerobic and facultative anaerobic gram negative, nonspore forming, rod shaped bacterium that can grow at forty-four and five tenths (44.5) degrees Celsius, that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive, and Methylumbelliferyl glucuronide (MUG) positive. It is a member of the indigenous fecal flora of warm-blooded animals.

(44)[~~(96) "Establishment" means a manufacturing or industrial works or facility in the operation of which sewage, industrial wastes, or other wastes are generated or stored including but not limited to an industrial plant, mill, factory, tannery, paper or pulp mill, mine or mineral processing or producing facility, quarry, or oil refinery.~~

~~(97) "Eutrophication" means the enrichment of a surface water by the discharge or addition of a nutrient.~~

~~(98)~~] "Exceptional water" means a surface water categorized as exceptional by the cabinet pursuant to 401 KAR 10:030[~~5:030~~].

(45)[~~(99)~~] "Excessive infiltration" means a high groundwater period induced peak infiltration rate that:

(a)[~~which~~] Results in an operational problem[~~problems~~] and permit violation[~~violations~~] at the WWTP or results in recurring overflows from the sewer system or the WWTP; and

(b)[~~, it~~] Does not include:

1. An overflow that results[~~overflows which result~~] from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly; or

2. A resulting overflow if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.

(46)[~~For combined sewer systems, infiltration shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.~~]

~~(100)~~] "Excessive inflow" means a rainfall induced peak inflow rate that:

(a)[~~which~~] Results in operational problems and permit violations at the WWTP or results in recurring overflows from the sewer system or the WWTP; and

(b)[~~For combined sewer systems, inflow shall not be considered to be excessive if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements.~~ It] Does not include:

1. A combined sewer system if an overflow occurs at a KPDES permitted overflow point that is in compliance with its permit requirements; or

2. An overflow that results[~~overflows which result~~] from blockages, power failures or other temporary mechanical failures, or flood waters entering the sewer system directly.

(47)[~~(101) "Existing source" means, for purposes of 401 KAR 5:080, any source which is not a new source or a new discharger.~~

~~(102) "Existing use" means a legitimate use being attained in or on a surface water of the commonwealth on or after November 28, 1975, irrespective of its use designation.~~

~~(103) "Expanded discharge" means an increase in pollutant loading of twenty (20) percent or greater.~~

~~(104) "°F" means degrees Fahrenheit.~~

~~(105)~~] "Facility" means:

(a) In[~~For purposes of~~] 401 KAR 5:005 or 401 KAR 5:006, a sewage system as defined in KRS 224.01-010 except for septic tanks, pretreatment facilities regulated by an approved pretreatment program or intermunicipal agreement, and disposal wells as used in 401 KAR 5:090; or

(b) In[~~For purposes of~~] 401 KAR 5:050 through[~~to~~] 401 KAR 5:080 and if used in conjunction with activity, any KPDES point source, or any other facility, including land or related appurtenances [~~thereto~~], that is subject to regulation under the KPDES program[~~; or~~

~~(c) For purposes of 401 KAR 5:090, any well, tank, pit, structure, appurtenance or improvement used in the exploration, drilling, or production of oil or gas or used for treating, storing, or disposing~~

~~of produced water~~].

(48)[~~(106) "Facilities or equipment" means buildings, structures, process or production equipment, or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.~~

~~(107)~~] "Fecal coliform" means the portion of the coliform group of bacteria that[~~which~~] are present in the intestinal tract or the feces of warm-blooded animals. It [~~generally~~] includes organisms that[~~which~~] are capable of producing gas from lactose broth in a suitable culture medium within twenty-four (24) hours at forty-four and five-tenths (44.5) degrees plus or minus two-tenths (0 2) degrees C.

(49)[~~(108) "Filter strip" means a strip or area of vegetation for removing sediment, organic material, and other pollutants from runoff and wastewater.~~

~~(109)~~] "Flood relief sewer" means a conduit, without direct sanitary connections, that is used to transport sewage if[~~when~~] a flood control structure or overflow detention basin is in operation.

(50)[~~(110)~~] "Force main" means a conduit used to transport sewage from a pump discharge to a sewer line, pump station, or WWTP.

(51)[~~(111) "Gas" means, for purposes of 401 KAR 5 080, all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.~~

~~(112)~~] "General permit" means a[~~any~~] KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued pursuant to[~~under~~] 401 KAR 5.055.

(52)[~~(113) "Geologically isolated" means a zone separated from drinking water aquifers and free of known open faults or fractures and free of any unprotected wells within the area of review.~~

~~(114)~~] "GPD" or "gpd" means gallons per day

(53)[~~(115) "Grab sample" means~~

~~(a) For purposes of 401 KAR 5 045, a single instantaneous portion of the effluent; or~~

~~(b) For purposes of 401 KAR 5.050 to 401 KAR 5:080, a single effluent portion which is not a twenty-four (24) hour composite sample.~~

~~(116)~~] "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, and solution conduits.

(54)[~~(117) "Harmonic mean flow" means the reciprocal of the mean of the reciprocal daily flow values.~~

~~(118) "Hazardous substance" means, for purposes of 401 KAR 5 050 to 401 KAR 5.080, any pollutant designated under 40 C.F.R. Part 116.~~

~~(119) "High quality water" means a surface water categorized as high quality by the cabinet pursuant to 401 KAR 5 030.~~

~~(120) "Holding pit" means an earthen excavated depression which receives and stores produced water at a facility.~~

~~(121) "Hydraulic gradient" means the vertical distance measured from the surface of the lagoon, one (1) foot below the spillway, to the bottom of the liner, divided by the thickness of the liner.~~

~~(122) "Hypolimnion" means the lower cold region of a thermally stratified lake or reservoir that extends below the metalimnion to the bottom.~~

~~(123) "IC_{25}" means an inhibition concentration of twenty-five (25) percent.~~

~~(124) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a KPDES permit, other than the KPDES permit for discharges from the municipal separate storm sewer, and discharges resulting from fire fighting activities.~~

~~(125) "Impact" means, for the purpose of 401 KAR 5:026 through 401 KAR 5.031, a change in the chemical, physical, or biological quality or condition of a surface water.~~

~~(126) "Impairment" means, for the purpose of 401 KAR 5:026 through 401 KAR 5 031, a detrimental impact to a surface water that prevents attainment of a designated use.~~

~~(127) "Inactive mining operations" means mining sites that are not being actively mined, but which have an identifiable owner or operator. Inactive mining operations do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.~~

~~(128) "Incorporated place" means a city, town, township, or village that is created under the Kentucky Revised Statutes.~~

~~(129) "Indigenous aquatic life" means naturally occurring aquatic organisms including but not limited to bacteria, fungi, algae, aquatic insects, other aquatic invertebrates, reptiles, amphibians, and fishes. Under some natural conditions one (1) or more of the above groups may be absent from a surface water.~~

~~(130) "Indirect discharge" or "discharge" means, for purposes of 401 KAR 5 057, the introduction of pollutants into a POTW from a nondomestic industrial source regulated by the program.~~

~~(131) "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.~~

~~(132) "Industrial user" or "user" means a source of indirect discharge.~~

~~(133) "Industrial wastes" means any liquid or other waste resulting from a process of industry, manufacture, trade, or business; or from the depletion of a natural resource.~~

~~(134)~~] "Industrial wastewater treatment plant" or "IWWTP" means a privately owned WWTP with more than ninety (90) percent of the influent flow from sources of industrial waste.

(55)[~~(135)~~] "Infiltration" means water other than wastewater that enters a sewer system from the ground through means such as defective pipes, pipe joints, connections, or manholes.

(56)[~~(136)~~] "Inflow" means water other than wastewater that enters a sewer system from means such as roof leaders, yard drains, area drains, drains from springs or swampy areas, openings in manhole covers, cross connections with storm sewers, catch basins, cooling towers, storm waters, source runoff, street wash waters, drainage, or any other source that[~~which~~] directs rainwater into the sewer system.

(57)[~~(137) "Inhibition concentration of twenty-five (25) percent" or "IC_{25}" means the concentration that is determined by a linear interpolation method for estimating the concentration at which a twenty-five (25) percent reduction is shown in reproduction or growth in test organisms, and which statistically approximates the concentration at which no unacceptable chronic effect is observed.~~

~~(138)~~] "Injection" means a type of land application in which the waste is placed directly beneath the land surface.

(58)[~~(139) "Intended use plan" means that document developed by the cabinet annually or biennially, as necessary, which contains a project priority list that prioritizes the cabinet's projects qualifying for federally assisted wastewater revolving fund monies pursuant to KRS Chapter 224A.~~

~~(140)~~] "Interference" is defined by 40 C F R 403 3(k)

(59)[~~means a discharge which, alone or in conjunction with discharges from other sources:~~

~~(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and~~

~~(b) Is a cause of a violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and administrative regulations or permits issued thereunder or under more stringent local administrative regulations: Section 405 of the Clean Water Act, as amended, the Solid Waste Disposal Act as amended (SWDA), including RCRA, and including any administrative regulations contained in a sludge management plan prepared pursuant to Subtitle D of the SWDA as amended, the Clean Air Act as amended, and the Toxic Substances Control Act as amended.~~

~~(141)~~] "Intermediate facility" means an intermediate[a] WWTP [~~with an average daily design capacity of 10,000 to 49,999 gallons per day (GPD)~~] or a sewer line[~~lines~~] of 2,500 feet to 5,000 feet in length including appurtenances.

(60)[~~(142)~~] "Intermediate nonpublicly-owned treatment works" means a facility with[~~which has~~] a design flow rate of between 10,000 gpd and 49,999 gpd of wastewater containing only conventional pollutants and that[~~which~~] is not a POTW.

(61)[~~(143)~~] "Intermediate WWTP" means a[~~(a)~~] WWTP with

an average daily design capacity of 10,000 to 49,999 gpd.

(62)[~~; or~~

~~(b) For coal washing facilities, a WWTP which serves a permanent coal processing facility that processes less than or equal to 500 tons per hour of raw coal.~~

~~(144) "Intermittent water" means a stream that flows only at certain times of the year.~~

~~(145)~~] "Interstate agency" means an agency of which Kentucky and one (1) or more states is a member established by or under an agreement or compact, or any other agency, of which Kentucky and one (1) or more other states are members, having substantial powers or duties pertaining to the control of pollution as determined and approved by the secretary or administrator pursuant to 33 U.S.C. 1251 – 1387[~~under the CWA~~] or KRS Chapter 224.

(63)[~~(146) "IWWTP" means an industrial WWTP.~~

~~(147) "KAR" means Kentucky Administrative Regulations.~~

~~(148)~~] "Karst" means the type of geologic terrain underlain by carbonate rocks where significant solution of rock has occurred due to flowing groundwater.

(64)[~~(149) "Karst feature" means a naturally occurring feature formed by the dissolution of carbonate rock including but not limited to a sinkhole, drain, karst window, swallet, spring, sinking stream, or cave.~~

~~(150)~~] "Kentucky Intersystem[~~Intermunicipal~~] Operational Permit" or "KISOP"[~~"KIMOP"~~] means a permit issued pursuant to 401 KAR 5:005 for operating a [~~publicly-owned~~] sewer system that[~~which~~] has more than 5,000 linear feet of sewer line that[~~which~~] discharges to a sewer system, or a WWTP that[~~which~~] is owned by another person.

(65)[~~(151)~~] "Kentucky No Discharge Operational Permit" or "KNDOP" means a permit issued pursuant to 401 KAR 5:005 for operating a WWTP that[~~which~~] does not have a discharge to a stream, including agricultural waste handling systems and spray irrigation systems.

(66)[~~(152)~~] "Kentucky Pollutant Discharge Elimination System" or "KPDES" means the Kentucky program for issuing, modifying, revoking and reissuing, revoking, monitoring and enforcing permits to discharge, and imposing and enforcing pretreatment requirements.

(67)[~~(153) "kg" means kilograms.~~

~~(154) "KPDES" means the Kentucky Pollutant Discharge Elimination System.~~

~~(155)~~] "KPDES permit" means a Kentucky Pollutant Discharge Elimination System permit issued to a facility, including a POTW, or activity pursuant to KRS Chapter 224 for the purpose of operating the facility or activity.

(68)[~~(156) "KRS" means Kentucky Revised Statutes.~~

~~(157)~~] "Land application" means the uniform placement of animal waste on or in the soil by spraying or spreading on the surface, incorporation into the soil, or injection directly beneath the surface.

(69) "Land application area" is defined by 40 C.F.R. 122.23(b)(3).

(70)[~~(158)~~] "Land treatment" or "land disposal" means the application or incorporation of a pollutant onto or into the soil.

(71) "Large animal feeding operation" means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(a) 700 mature dairy cows, whether milked or dry;

(b) 1,000 veal calves;

(c) 1,000 cattle other than mature dairy cows or veal calves. Cattle shall include heifers, steers, bulls, or cow or calf pairs;

(d) 10,000 swine each weighing fifty-five (55) pounds or more;

(e) 500 horses;

(f) 10,000 sheep or lambs;

(g) 55,000 turkeys;

(h) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

(i) 125,000 chickens other than laying hens, if the AFO uses other than a liquid manure handling system;

(j) 30,000 ducks, if the AFO uses other than a liquid manure handling system; or

(k) 5,000 ducks, if the AFO uses a liquid manure handling system.

(73)[~~(159)~~] "Large facility" means a WWTP with an average daily design capacity of 50,000 GPD or more, or a sewer line[~~lines~~] of more than 5,000 feet in length including appurtenances.

(74)[~~(160) "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:~~

~~(a) Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census; or~~

~~(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:~~

~~1. Physical interconnections between the municipal separate storm sewers;~~

~~2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;~~

~~3. The quantity and nature of pollutants discharged to waters of the commonwealth;~~

~~4. The nature of the receiving waters; and~~

~~5. Other relevant factors; or~~

~~(c) The cabinet may, upon petition, designate as a large municipal separate storm sewer system, those municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.~~

~~(161)~~] "Large nonpublicly-owned treatment works" means a facility that[~~which~~] has a design flow rate of greater than or equal to 50,000 gpd of wastewater containing only conventional pollutants and that[~~which~~] is not a POTW.

(75)[~~(162)~~] "Large WWTP" means[~~: (a)~~] a WWTP with an average daily design capacity of 50,000 GPD or more.

(76)[~~; or (b) For coal washing facilities, a WWTP which serves a permanent coal processing facility that processes more than 500 tons per hour of raw coal.~~

~~(163) "LC_1" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to one (1) percent of the organisms tested in a toxicity test during a specified exposure period.~~

~~(164) "LC_{50}" means that concentration of a toxic substance or mixture of toxic substances that is lethal, or immobilizing if appropriate, to fifty (50) percent of the species tested in a toxicity test during a specified exposure period.~~

~~(165) "Log sorting and log storage facilities" means, for purposes of 401 KAR 5:050 to 401 KAR 5:080, facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water or stored on land where water is applied intentionally on the logs.~~

~~(166)~~] "Long-term CSO control plan" means a control plan that[~~which~~] complies with the [~~"~~]Combined Sewer Overflow Control Policy[~~"~~] issued by the U.S. EPA in the "Federal Register" on April 19, 1994 (59 FR 18688)[~~, incorporated by reference in Section 3 of this administrative regulation~~].

(77) "Manure" is defined by 40 C.F.R. 122.23(b)(5).

[~~(167) "Maintain" means, for purposes of 401 KAR 5:026 through 401 KAR 5:031, to preserve or keep in present condition by not allowing an adverse permanent or long-term change to water quality or to a population of an aquatic organism or its habitat.~~

~~(168)~~] "Maintenance replacement" means replacement of:

(a) Existing component parts with component parts that have similar characteristics and capacity; or

(b) A section of sewer or force main with the same size, alignment, and slope;

(c) The term does not include replacement of an entire WWTP with a new WWTP.

(79)[~~(169)~~] "Major facility" means a[~~any~~] KPDES facility or activity classified as a KPDES facility[~~such~~] by the cabinet in cooperation with the regional administrator. Designation as a major indus-

try as used in KRS 224.70-120, does not indicate automatic classification as a major facility.

(80)[~~(170)~~] "Major industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities including resource recovery, manufacturing, products distribution, or[~~and~~] wholesale and retail trade. Each industry has a design flow rate of greater than or equal to 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants. A major industry designation is not a criteria for classification as a major facility.

(81)[~~(171)~~] "Major municipal separate storm sewer outfall" or "major outfall" is defined by 40 C.F.R. 122.26(b)(5).

(82)[~~means:~~

~~(a) A municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of thirty-six (36) inches or more or its equivalent of a discharge from a single conveyance other than a circular pipe which is associated with a drainage area of more than fifty (50) acres; or~~

~~(b) For municipal separate storm sewers that receive storm water from lands zoned for industrial activity based on comprehensive zoning plans or the equivalent, an outfall that discharges from a single pipe with an inside diameter of twelve (12) inches or more or from its equivalent of a discharge from other than a circular pipe associated with a drainage area of two (2) acres or more.~~

~~(172) "Major outfall" means a major municipal separate storm sewer outfall.~~

~~(173) "Manmade" means constructed by humans.~~

~~(174) "Maximum allowable industrial loading" means the total mass of a pollutant that all industrial users of a POTW, or subgroup of a industrial users identified by the POTW, may discharge pursuant to limits developed under 401 KAR 5:057, Section 3(3).~~

~~(175) "Maximum daily discharge limitation" means the highest allowable daily discharge.~~

~~(176)~~] "Measurement" means the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

(83) "Medium animal feeding operation means an AFO that stables or confines the type and number of animals within any of the following ranges:

(a) 200 to 699 mature dairy cows, whether milked or dry;

(b) 300 to 999 veal calves;

(c) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, or cow or calf pairs;

(d) 750 to 2,499 swine each weighing fifty-five (55) pounds or more;

(e) 3,000 to 9,999 swine each weighing less than fifty-five (55) pounds;

(f) 150 to 499 horses;

(g) 3,000 to 9,999 sheep or lambs;

(h) 16,500 to 54,999 turkeys;

(i) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(j) 37,500 to 124,999 chickens, other than laying hens, if the AFO uses other than a liquid manure handling system;

(k) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(l) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system; or

(m) 1,500 to 4,999 ducks if the AFO uses a liquid manure handling system.

(84) "Medium concentrated animal feeding operation is defined by 40 C.F.R. 122.23(6)

(85)[~~(177) "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:~~

~~(a) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census; or~~

~~(b) Owned or operated by a municipality other than that described in paragraph (a) of this subsection, and that are designated by the cabinet as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (a) of this subsection. In making this determination the cabinet may consider the following factors:~~

~~1. Physical interconnections between the municipal separate storm sewers;~~

~~2. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (a) of this subsection;~~

~~3. The quantity and nature of pollutants discharged to waters of the commonwealth;~~

~~4. The nature of the receiving waters; and~~

~~5. Other relevant factors; or~~

~~(c) The cabinet, may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one (1) or more of the systems described in paragraph (a) or (b) of this subsection.~~

~~(178) "Metalimnion" means the region of the thermocline.~~

~~(179)~~] "µg/l" means micrograms per liter, same as ppb, assuming unit density.

(86)[~~(180)~~] "mgd" or "MGD" means million gallons per day.

(87)[~~(181) "mg/l" means milligrams per liter, same as ppm, assuming unit density.~~

~~(182)~~] "Milligrams per liter" or "mg/l" means the milligrams of substance per liter of solution[~~,~~] and is equivalent to parts per million in water, assuming unit density.

(88)[~~(183) "Minimum design volume" means the treatment volume in the lagoon necessary to maintain an anaerobic condition in the lagoon.~~

~~(184)~~] "Minor industry" means an industry that generates and discharges process-related wastewater while engaged in commercial activities and[~~including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. Each industry~~] has a design flow rate of less than 50,000 gpd of process wastewater containing conventional, nonconventional, or thermal pollutants.

(89)[~~If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a major industry.~~

~~(185)~~] "Minor modification to a WWTP" means, [~~for purposes of construction approvals required by 401 KAR 5:005,~~] a modification that[~~which~~] does not change the WWTP average daily design hydraulic or organic treatment capacity of the WWTP or discharge location.

(90)[~~(186)~~] "Mixing zone" means a domain of a water body contiguous to a treated or untreated wastewater discharge with quality characteristics different from those of the receiving water. The discharge is in transit and progressively diluted from the source to the receiving system. The mixing zone is the domain where wastewater and receiving water mix.

(91)[~~(187) "MS4" means a municipal separate storm sewer system.~~

~~(188)~~] "Municipal separate storm sewer system" or "MS4" is defined by 40 C.F.R. 122.26(b)(8).

(92)[~~means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to subsections (160), (177), and (286) of this section, or designated under 401 KAR 5:060, Section 12(1)(a)5, consisting of a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:~~

~~(a) Owned or operated by a state, city, town, county, district, association, or other public body created by or pursuant to law, having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the CWA, 33 U.S.C. 128, that discharges to waters of the commonwealth;~~

~~(b) Designed or used for collecting or conveying storm water;~~

~~(c) Which is not a combined sewer; and~~

~~(d) Which is not part of a POTW.~~

~~(189)~~] "Municipality" means a city, district, or other public body created by or under the Kentucky Revised Statutes and having

jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency pursuant to[under CWA Section 208,] 33 U.S.C. 1288.

(93)[(190)] "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements.

(94)[(191)] "National pretreatment standard", "pretreatment standard", or "standard" means a federal regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with 33 U.S.C. 1311(b) and (c) that[Section 307(b) and (c) of the Act, which] applies to industrial users. This term includes prohibitive discharge limits established pursuant to 401 KAR 5:057.

(95)[(192)] "Natural Resources Conservation Service" or "NRCS" means the organization created pursuant to 7 U.S.C. 6962 in the U.S.[United States] Department of Agriculture.

(96)[The NRCS was formerly called the Soil Conservation Service.

(193) "Natural temperature" means, for purposes of 401 KAR 5:026 through 401 KAR 5:031, the temperature that would exist in waters of the commonwealth without the change of enthalpy of artificial origin, as contrasted with that caused by climatic change or naturally occurring variable temperature associated with riparian vegetation and seasonal changes.

(194) "Natural water quality" means, for purposes of 401 KAR 5:026 through 401 KAR 5:031, those naturally occurring physical, chemical, and biological properties of waters.

(195) "Net discharge" means, for purposes of 401 KAR 5:026 through 401 KAR 5:031, the amount of substance released to a surface water by excluding the influent value from the effluent value if both the intake and discharge are from and to the same or similar body of water.

(196)] "New discharger" means, as used in 401 KAR 5:060 through[for purposes of 401 KAR 5:050 to 401 KAR] 5:080, a[any] building, structure, facility or installation:

(a)1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. That[Which] has never received a finally effective NPDES or KPDES permit for discharges at that site; and

4. That[Which] is not a new source.

(b) This definition includes an indirect discharger that[which] commences discharging into the waters of the commonwealth after August 13, 1979. It also includes any existing mobile point source that begins discharging at a site for which it does not have a permit.

(97)[(197)] "New source" means as used in 401 KAR 5:060 through[: (a) For purposes of 401 KAR 5:050 to 401 KAR] 5:080, a[any] building, structure, facility, or installation from which there is or may be a [direct or indirect] discharge of pollutants, the construction of which commenced.

(a)[1.] After promulgation of U.S. EPA's standards of performance pursuant to 33 U.S.C. 1316 that[or pretreatment standards which] are applicable to the source; or

(b)[2.] After publication[proposal] of U.S. EPA's standards of performance pursuant to 33 U.S.C. 1316 that[or pretreatment standards which] are applicable to the source, but only if the federal standards are promulgated within 120 days of publication.

(98)[their proposal; or

(b)1. For purposes of 401 KAR 5:057, a building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards which will be applicable to the source if the standards are thereafter promulgated if:

a. The building, structure, facility or installation is constructed at a site at which no other source is located;

b. The building, structure, facility or installation totally replaces the process of production equipment that causes the discharge of pollutants at an existing source; or

c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining if these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source shall be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subparagraph 1b or c of this paragraph but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a new source has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on site construction program.

(i) A placement, assembly, or installation of facilities or equipment,

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which may be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this clause.

(198)] "Nonconventional pollutant" means a pollutant not considered to be a conventional pollutant, including a priority pollutant established[pollutants identified] in 401 KAR 5:060.

(99)[(199)] "Nonpoint" means any source of pollutants not defined by a point source.

(100)[, as used in this chapter.

(200) "Nonprocess industry" means an industry that generates and discharges only nonprocess wastewater while engaged in commercial activities including manufacturing, resource recovery, products distribution, and wholesale and retail trade. Each industry discharges nonprocess wastewater, for example, noncontact cooling or stockpile run-off, and discharges wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to or greater than the ninety six (96) hour lethal concentration for fifty (50) percent mortality (96 LC_{50}) for a representative indigenous aquatic organism. If any of the above conditions is not met, then the discharge is considered to be from a minor industry.

(201) "NPDES" is defined in KRS 224.01-010.

(202) "NRCS" means the Natural Resources Conservation Service.

(203)] "Nutrient management plan" means the plan for an individual operation developed for the purpose of recycling nutrients from animal waste onto cropland or pasture.

(101)[in a manner that does not cause environmental harm.

(204) "Oil" means, for purposes of 401 KAR 5:090, natural crude oil or petroleum and other hydrocarbons, regardless of specific gravity, which are produced at the well in liquid form and which are not the result of condensation of gas after it leaves the underground reservoir.

(205) "O&M" means operation and maintenance.

(206) "Operate" means, for purposes of 401 KAR 5:090, any act relating to the construction, operation, or maintenance of any facility.

(207)] "Operator" means a person involved in the operation of a facility or activity.

(102)[: (a) Any person involved in the operation of a facility or activity;

(b) For purposes of 401 KAR 5:010, any person involved in the operation of a wastewater system, or

(c) For purposes of 401 KAR 5:090, any person who operates a facility.

(208)] "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and other foreign substances not included within the definitions of industrial wastes and sewage that[which] may cause or contribute to the pollution of [any] waters of the commonwealth.

(103)[(209)] "Outfall" means, for municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to waters of the commonwealth, but does

not include open conveyances connecting two (2) municipal separate storm sewers, or pipes, tunnels, or other conveyances that[which] connect segments of the same stream or other waters of the commonwealth and are used to convey waters of the commonwealth.

(104)[(210) "Outstanding national resource water" means a surface water categorized by the cabinet as an outstanding national resource water pursuant to 401 KAR 5:030.

(211)] "Outstanding state resource water" means a surface water designated by the cabinet as an outstanding state resource water pursuant to 401 KAR 10:031[5:031].

(105)[(212)] "Overburden" means [any] material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations

(106)[(213)] "Overflow" means any intentional or unintentional diversion of flow from a facility.

(107)[: (a) Any intentional or unintentional diversion of flow from a facility; or

(b) For purposes of 401 KAR 5:057, the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant.

(214)] "Owner" means a[any] person who has financial[possesses any] interest in a[: (a) The right to develop, operate, or produce oil or gas; or (b) Any] facility or activity.

(108)[(215)] "Package WWTP" means a factory-built WWTP that[which] is transported to and assembled or set in place at the site.

(109)[(216) "Pass through" means a discharge which exits the POTW into waters of the commonwealth in quantities or concentrations which, alone or in conjunction with discharges from other sources, is a cause of violation of a requirement of the POTW's KPDES permit, including an increase in the magnitude or duration of a violation.

(217) "pCi/l" means picocuries per liter.

(218) "PCR" means primary contact recreation.

(219)] "Permit" means.

(a) As used in[For purposes of] 401 KAR 5:005 or 401 KAR 5:006, a document issued by the cabinet that[which] authorizes the permittee to construct, modify, or operate a facility;

(b) As used in[For purposes of] 401 KAR 5:050 through[to 401 KAR] 5:080, a KPDES permit.

(110)[(220)] "Plan of study" means a report that contains the following information required for a regional facility plan by 401 KAR 5:006, Section 4:

(a) Planning area maps;

(b) A discussion of the need for sewer service in the area;

(c) Population projections; and

(d) An estimation of the twenty (20) year cost by category.

(111)[(221)] "Planning area" means the geographic area proposed to be served by a regional planning agency in a projected twenty (20) year period.

(112)[(222)] "Point source" is defined by 33 U.S.C. 1362(14)[means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation, from which pollutants are or may be discharged]. The term does not include agricultural storm water run-off or return flows from irrigated agriculture.

(113)[(223)] "POTW" means publicly-owned treatment works as defined in KRS 224.01-010.

(114)[(224)] "POTW treatment plant" means that portion of the POTW that[which] is designed to provide treatment, including recycling and reclamation, of municipal sewage and industrial waste.

(115)[(225) "ppb" means parts per billion; assuming unit density, same as µg/l.

(226) "ppm" means parts per million; assuming unit density, same as mg/l.

(227) "Preexisting discharge" means any discharge that is occurring when applying for a KPDES permit under 401 KAR 5:029 or 401 KAR 5:040.

(228)] "Pretreatment" is defined by 40 C.F.R. 403.3(s).

(116)[means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing the pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes or by other means, except as prohibited by 401 KAR 5:057. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that may interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit, calculated in accordance with 401 KAR 5:057.

(229)] "Pretreatment requirement" means a substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on an industrial user.

(117)[(230)] "Pretreatment standard" means a national pretreatment standard.

(118)[(231) "Primary contact recreation water" means those waters suitable for full body contact recreation during the recreation season of May 1 through October 31.

(232) "Primary industry category" means any industry category listed as being a primary industry in 401 KAR 5:060.

(233)] "Primary responsibility" means having the authority to conduct the procedures and practices necessary to ensure that the wastewater system or any portion thereof is operated in accordance with accepted practices, laws, and administrative regulations of the commonwealth, or to supervise others in conducting these practices.

(119)[(234)] "Privately-owned treatment works" is defined by 40 C.F.R. 122.2.

(120) "Production area" means, for animal feeding operations, the area defined by 40 C.F.R. 122.23(b)(8).

(121)[means any device or system which is used to treat wastes from any facility or source of sewage whose owner or operator is not the owner or operator of the treatment works and which is not a POTW.

(235) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

(236) "Produced water" means all water, pollutants, and combinations thereof resulting, obtained, or produced from the exploration, drilling, or production of oil or gas.

(237) "Productive aquatic community" means an assemblage of indigenous aquatic life capable of reproduction and growth.

(238)] "Professional engineer" or "engineer" is defined by KRS 322.010(2).

(122)[(239)] "Project priority list" means the list developed by the cabinet pursuant to KRS Chapter 224A that[which] includes a priority ranking of applicants for the construction of wastewater treatment works under 33 U.S.C. 1313(e)(3)(H).

(123)[(240) "Propagation" means the continuance of a species by successful spawning, hatching, and development or natural generation in the natural environment, as opposed to the maintenance of the species by artificial culture and stocking.

(241)] "Proposed permit" means a KPDES permit prepared after the close of the public comment period and, if applicable, any public hearing and administrative appeals that[which] is sent to U.S. EPA for review before final issuance by the cabinet. A proposed permit is not a draft permit.

(124)[(242)] "Public water system" is defined by 40 C.F.R. 141.2.

(125)[shall have the meaning given it in 401 KAR 8:010.

(243)] "RCRA" means the Resource Conservation Recovery Act as amended, [(]42 U.S.C. 6901 – 6992k[et seq.)].

(126)[(244) "Reclamation area" means the surface area of a coal mine which has been returned to required contour and on which revegetation (seeding or planting) work has commenced.

(245)] "Recommencing discharger" means a source that[which] recommences discharge after terminating operations.

(127)[(246)] "Regional administrator" means the regional administrator of the Region IV office of the U.S. EPA or the authorized representative of the regional administrator.

(128)[(247)] "Regional facility" means a facility that is:

(a) Owned by a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220; and

(b) Designated by a regional facility plan or water quality management plan to provide wastewater collection, transportation, or treatment services for a specific area.

(129)[This facility shall be owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(248)] "Regional facility plan" means a type of water quality management plan addressing point sources of pollution for the purpose of areawide waste treatment management planning prepared by the designated regional planning agency pursuant to 33 U.S.C. 1251 - 1387[Sections 201, 205, and 208 of the CWA] to control point sources of pollution within a planning area.

(130)[(249)] "Regional planning agency" means a governmental agency, such as a city, county, or other public body created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220, that has been designated pursuant to 33 U.S.C. 1288 [of the CWA] and 40 C.F.R. [Part] 130 to provide planning for the treatment of wastewater and for controls and recommendations relating to wastewater for a particular area; and[.] those existing agencies that have developed plans pursuant to 33 U.S.C. 1281, 1285, 1288, and 1313(e) to provide planning related to wastewater collection, transportation, or treatment for a particular[Sections 201, 205, 208, and 303(e) of the CWA shall be considered the regional planning agency for the] area.

(131)[(250)] "Regional sewage collection system" means a sewage collection system designated by a regional planning agency that[which] is owned by a city, county, or other public body that was created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220.

(132)[(251) "Register" means to file forms with the division which contain information as to oil and gas well geographic location, production, produced water production, methods used for treating, storing, or disposing of produced water, and other information determined to be necessary by the division.

(252) "Remined area" means only that area of any coal remining operation on which a coal mining operation was conducted before August 3, 1977.

(253) "Removal" means, for purposes of 401 KAR 5:057, a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration may be obtained by physical, chemical, or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal shall not mean dilution of a pollutant in the POTW.

(254) "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish, and wildlife in the body of water into which a discharge of heat is made.

(255) "Representative indicator organism" means an aquatic organism designated for use in toxicity testing because of its relative sensitivity to toxicants and its widespread distribution in the aquatic environment.

(256) "Requester" means any industrial user or a POTW or other interested person seeking a variance from the limits specified in a categorical pretreatment standard.

(257) "Residual solids" means the accumulated solid waste in the lower portion of a lagoon that contains greater than two and zero tenths (2.0) percent total solids by dry weight analysis.

(258) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(259)] "Run-off coefficient" means the fraction of total rainfall that will appear at a conveyance as run-off.

(133)[(260)] "SARA" means the Superfund Amendments and Reauthorization Act, 42 U.S.C. 9601 – 9675[as amended].

(134)[(261)] "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements leading to compliance with KRS Chapter 224 and 401 KAR Chapters 4 through 11[administrative regulations promulgated pursuant thereto].

(135) "SDWA" means Safe Drinking Water Act, 42 U.S.C. 300f – 300j-26.

(136)[(262) "SCR" means secondary contact recreation.

(263) "Secondary contact recreation waters" means those waters that are suitable for partial body contact recreation, with minimal threat to public health due to water quality.

(264) "Secondary industry category" means any industry category which is not a primary industry category.

(265)] "Secondary treatment" means that degree of treatment that[which] results in an effluent quality that[which] meets the minimum requirements of 401 KAR 5:045.

(137)[(266)] "Service area" means that geographic area currently being served by a regional facility.

(138)[(267)] "Seven-Q-ten" or "$7Q_{10}$" means that minimum average flow that[which] occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(139)[(268) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage shall not mean economic loss caused by delays in production.

(269)] "Sewage" means the water-carried human or animal wastes from residences, buildings, or other places together with industrial wastes or underground, surface, storm or other water, as may be present.

(140)[(270)] "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a wastewater treatment plant. Sewage as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water run-off[,] that are discharged to or otherwise enter a wastewater treatment plant.

(141)[(271)] "Sewer line" means a device[these devices] used for collecting, transporting, pumping, or disposing of sewage, but not a building sewer that[which] serves an individual building. A sewer line begins at the junction of two (2) building sewers which serve different buildings. Sewer lines include gravity sewer lines, pump stations, and force mains.

(142)[(272)] "Sewer line extension" means a proposed construction project which extends a sewer system; it includes gravity sewer lines, pump stations, and force mains.

(143)[(273)] "Sewer system" means the network of sewer lines, pump stations, and force mains that discharge to a common WWTP.

(144)[(274)] "SIC" means standard industrial classification.

(145)[(275)] "Significant industrial user" or "SIU" is defined by 40 C.F.R. 403.3(v)

(146)[means: (a) Except as provided in paragraph (b) of this subsection:

1. Industrial users subject to categorical pretreatment standards promulgated by EPA and codified in 40 C.F.R. Chapter I, Subchapter N (Parts 401 through 471); and

2. Any other industrial user that:

a. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewater;

b. Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

c. Is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement.

(b) Upon a finding that an industrial user meeting the criteria for a significant industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating a pretreatment standard or requirement, the control authority may, on its own initiative or in response to a petition received from an industrial user or a POTW, and in accordance with 401 KAR 5:057, determine that the industrial user is not a significant industrial user.

(276) "Significant materials" means, but is not limited to, and for purposes of 401 KAR 5:050 to 401 KAR 5:080: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in

~~food processing or production; hazardous substances designated under Section 101(14) of CERCLA, 42 U.S.C. 9601; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers, 42 U.S.C. 11023; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges.~~

~~(277)~~] "Silvicultural point source" is defined by 40 C.F.R. 122.27.27(b)(1).

(147)[~~means, for purposes of 401 KAR 5:050 to 401 KAR 5:080, any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the commonwealth. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff.~~

~~(278)~~] "Sinkhole" means a naturally occurring topographic depression in a karst area. Its drainage is subterranean and serves as a recharge source for groundwater and it is formed by the collapse of a conduit or the solution of bedrock.

(148)[~~(279)~~] "Site" means, as used in 401 KAR 5:060 through[~~for purposes of 401 KAR 5:050 to 401 KAR~~] 5.080, the land or water area where a[~~any~~] facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(149)[~~(280) "SIU" means significant industrial user.~~

~~(281)~~] "Sludge requirements" means the following statutory provisions and administrative regulations or permits issued thereunder, or under more stringent local administrative regulations:

(a) Section 405 of the Clean Water Act, 33 U.S.C. 1345[~~, as amended~~];

(b) The Solid Waste Disposal Act (SWDA), as amended, including Title II, more commonly referred to as the Resource Conservation Recovery Act (RCRA), 42 U.S.C. 6901 – 6992k[~~et seq. and administrative regulations contained in any sludge management plan prepared pursuant to Subtitle D of SWDA, as amended~~];

(c) The Clean Air Act, 42 U.S.C. 7401 – 7671q[~~et seq., as amended~~]; and

(d) The Toxic Substances Control Act, 15 U.S.C. 2601 – 2692[~~et seq., as amended~~].

(150) "Small concentrated animal feeding operation is defined by 40 C.F.R. 122.23(9).

(151)[~~(282) "SMCRA" means the Surface Mining Control and Reclamation Act, as amended, 33 U.S.C. 1201 et seq.~~

~~(283)~~] "Small facility" means a WWTP with an average daily design capacity less than 10,000 GPD or a sewer line[~~lines~~] of less than 2,500 feet in length including appurtenances.

(152)[~~(284) "Small MS4" means a small municipal separate storm sewer system.~~

~~(285) "Small municipal separate storm sewer system" means all municipal separate storm sewers that are:~~

~~(a) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to subsection (160) or (177) of this section, or designated in 401 KAR 5:060, Section 12(1)(a)5.~~

~~(b) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways or other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.~~

~~(286)~~] "Small nonpublicly-owned treatment works" means a facility that[~~which~~] has a design flow rate of less than 10,000 gpd of wastewater containing only conventional pollutants and that[~~which~~] is not a POTW.

(153)[~~(287)~~] "Small WWTP" means[~~: (a)~~] a WWTP with an average daily design capacity of less than 10,000 gpd.

(154)[~~; or~~

~~(b) For coal washing facilities, a WWTP which serves a portable coal processing facility.~~

~~(288)~~] "Source" means a[~~any~~] building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(155)[~~(289) "SPCC" means spill prevention control and countermeasure.~~

~~(290) "Standard" means:~~

~~(a) For purposes of 401 KAR 5:026, 401 KAR 5:029, 401 KAR 5:030 or 401 KAR 5:031, a water quality standard; or~~

~~(b) For purposes of 401 KAR 5:057, a pretreatment standard.~~

~~(291)~~] "Storm water" means storm water run-off, snow melt run-off, and surface run-off and drainage.

(156)[~~(292)~~] "Storm water discharge associated with industrial activity" is defined by 40 C.F.R. 122.26(b)(14).

(157)[~~means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw material storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the KPDES program under 401 KAR 5:055. For the categories of industries identified in this subsection, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas including tank farms for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in paragraphs (a) through (k) of this subsection, include those facilities designated under the provisions of 401 KAR 5:060, Section 12(1)(a)5. The following categories of facilities are considered to be engaging in an industrial activity for purposes of this definition:~~

~~(a) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 401 KAR 5:065, Section 4, except facilities with toxic pollutant effluent standards which are exempted under paragraph (k) of this subsection;~~

~~(b) Facilities classified as Standard Industrial Classifications 24 except 2434; 26 except 265 and 267; 28 except 283; 29; 311; 32 except 323; 33, 3441; and 373;~~

~~(c) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations, except for areas of coal mining operations that are no longer reclamation areas because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990, and oil and gas exploration production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of these operations;~~

~~(d) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;~~

~~(e) Landfills, land application sites, and open dumps that receive or have received any industrial wastes, that is waste that is received from any of the facilities described under this subsection, including those that are subject to regulation under Subtitle D of RCRA;~~

~~(f) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;~~

~~(g) Steam-electric power generating facilities, including coal handling sites;~~

~~(h) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 except 4221-4225, 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication, equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (a) to (g) and (i) to (k) of this subsection are associated with industrial activity;~~

~~(i) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one and zero tenths (1.0) mgd or more, or required to have an approved pretreatment program under 401 KAR 5:057. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA, 33 U.S.C. 1345;~~

~~(j) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five (5) acres of total land area. Construction activity also includes the disturbance of less than five (5) acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five (5) acres or more;~~

~~(k) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 except 311, 323, 34 except 3441, 35, 36, 37 except 373, 38, 39, and 4221-25.~~

~~(293)~~] "Storm water discharge associated with small construction activity" is defined by 40 C F R 122 26(b)(15), except that:

(a) Waters of the "United States" means waters of the Commonwealth; and

(b) "Director" means "cabinet" if "director" refers to the director of an approved state program

(158)[means the discharge of storm water from:

~~(a) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one (1) and less than five (5) acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The cabinet may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five (5) acres where:~~

~~1. The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five (5) during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997 incorporated by reference in Section 3 of this administrative regulation. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 C.F.R. part 51. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. SW, Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street SW, Washington, DC 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An operator shall certify to the cabinet that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five (5); or~~

~~2. Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that these allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subparagraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the cabinet that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.~~

~~(b) Any other construction activity designated by the cabinet or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the commonwealth.~~

~~(294) "Stripper well" means any oil well producing ten (10) barrels or less per day of oil.~~

~~(295) "Submission" means, for purposes of 401 KAR 5:057:~~

~~(a) A request by a POTW to the cabinet for approval of a pretreatment program; and~~

~~(b) A request by a POTW to the cabinet for authority to revise the discharge limits in categorical pretreatment standards to reflect POTW pollutant removals.~~

~~(296)~~] "Supernatant" means the water that accumulates in the upper portion of a lagoon and contains not[no] greater than two and zero-tenths (2.0) percent total solids by dry weight analysis.

(159)[~~(297)~~] "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

(160)[~~(298)~~] "Surface waters" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface.[~~Effluent ditches and~~] Lagoons used for waste treatment and effluent ditches that[~~which~~] are situated on property owned, leased, or under valid easement by a permitted discharger are not considered to be surface waters of the commonwealth.

(161)[~~(299) "SWDA" means the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 et seq.~~

~~(300) "Tank battery" means an installation where oil is collected from wellheads and is separated from produced water.~~

~~(301) "TDS" means total dissolved solids.~~

~~(302) "Thermocline" means the plane in a thermally stratified body of water in which the maximum rate of decrease in temperature occurs with respect to depth.~~

~~(303) "TMDL" means total maximum daily load.~~

~~(304)~~] "Total dissolved solids" or "TDS" means the total dissolved solids (filterable residue) as determined by use of the method specified in 40 C.F.R. Part 136

(162)[~~(305)~~] "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources.

(163)[~~(306)~~] "Total suspended solids" or "TSS" means the total suspended solids (nonfilterable residue) as determined by use of the method specified in 40 C.F.R. Part 136.

(164)[~~(307)~~] "Toxic pollutant" means, as used in 401 KAR 5:060 through[~~for purposes of 401 KAR 5:060 to 401 KAR~~] 5:080, a[~~any~~] pollutant listed as being toxic in 401 KAR 5:080.

(165) "UIC" means Underground Injection Control.

(166)[~~(308) "Toxic substance" means a substance that is bioaccumulative, synergistic, antagonistic, teratogenic, mutagenic, or carcinogenic and causes death, disease, a behavioral abnormality, a physiological malfunction, or a physical deformity in an organism or its offspring or interferes with normal propagation.~~

~~(309) "Treatment lagoon" or "effluent lagoon" means, as used in 401 KAR 5:029 and as applied to facilities subject to 401 KAR 5:090, a secondary recovery or water flood impoundment on which on-site construction commenced before May 19, 1980, owned or operated by a person eligible to receive a KPDES permit for a discharge from that impoundment, if used for the purpose of diluting produced water, and if the owner or operator received approval from the cabinet of its request for designation as such on or before~~

~~September 4, 1986.~~

~~(310) "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership, including federal facilities, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge.~~

~~(311) "TSS" means total suspended solids.~~

~~(312) "Twenty-five (25) year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall event with a probable recurrence interval of once in twenty-five (25) years, as determined by "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971, Revised July 1, 1979".~~

~~(313) "Twenty-four (24) hour composite sample" means not less than twelve (12) effluent portions collected at regular intervals over a period of twenty-four (24) hours which are composited in proportion to flow.~~

~~(314) "Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act, 42 U.S.C. 6901 et seq.~~

~~(315)~~] "Underground injection control well" means a well used for the emplacement of fluids into the subsurface[~~injection~~].

(167)[~~(316)~~] "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards or technology-based effluent limitations because of factors beyond the reasonable control of the industrial user or permittee and does[~~. An upset shall~~] not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(168)[~~(317) "U.S.C." means United States Code.~~

~~(318) "U.S. EPA" means the United States Environmental Protection Agency.~~

~~(319)~~] "USGS" means the U.S.[~~United States~~] Geological Survey.

(169)[~~(320)~~] "Variance" means a[~~any~~] mechanism or provision pursuant to 401 KAR Chapter 5 that[~~under the KPDES administrative regulations which~~] allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines.

(170)[~~(321) "WAH" means warm water aquatic habitat.~~

~~(322) "Warm water aquatic habitat" or "WAH" means any surface water and associated substrate capable of supporting indigenous warm water aquatic life.~~

~~(323)~~] "Wastewater system" means a sewage system as defined in KRS 224.01-010(25).

(171)[~~(324)~~] "Wastewater treatment plant" or "WWTP" means a facility used for the treatment and disposal of sewage.

(172) "Water" or "Waters of the Commonwealth" is defined by KRS 224.01-010(33).

(173)[~~(325)~~] "Water quality management plan" or "WQM plan" means:

(a) A plan consisting of initial plans produced in accordance with [~~Sections 208 and 303(e) of the CWA,~~] 33 U.S.C. 1288 and 1313 and certified and approved updates to those plans; or

(b) A state or areawide waste treatment management plan developed and updated in accordance with [~~Sections 201, 205(j), 208, and 303(e) of the CWA,~~] 33 U.S.C. 1281, 1285j, 1288, and 1313e and 40 C.F.R. Part 130.

(174)[~~(326)~~] "Water quality standard" means an administrative regulation promulgated by the cabinet establishing the designated use of a surface water and the water quality criteria necessary to maintain and protect that designated use.

(175)[~~(327)~~] "Well" or "water well" means:

(a) For [~~purposes of~~] 401 KAR 5:005, as defined by KRS 223.400(7).

(176)[~~any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed if the actual or intended use in whole or in part of an excavation is the removal of water for any purpose, including but not limited to culinary household purposes, animal consumption, food manufacture, use of geothermal resources for domestic heating purposes, and industrial, irrigation, and dewatering purposes;~~

~~(b) For purposes of 401 KAR 5:050 to 401 KAR 5:080, a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension, or~~

~~(c) For purposes of 401 KAR 5:090, a borehole drilled, or proposed to be drilled for the purpose of producing gas or oil or one (1) through which gas or oil is being produced, or a borehole drilled or proposed to be drilled for the purpose of injecting any water, gas, produced water, or other fluid therein or one (1) into which any water, gas, produced water, or other fluid is being injected.~~

~~(328)~~] "Wellhead protection area" means:

(a) The surface and subsurface area surrounding a water well, well field, or spring, supplying a public water system, through which pollutants are reasonably likely to move toward and reach the water well, well field, or spring; or

(b) An area defined as a wellhead protection area in a county water supply plan.

(177)[~~(329) "Well injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.~~

~~(330)~~] "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

Section 2.[~~(331) "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.~~

~~(332) "WWTP" means wastewater treatment plant.~~

~~(333) "Zone" means a subsurface layer or stratum capable of producing or receiving fluids.~~

~~(334) "Zone of initial dilution" means the limited area permitted by the cabinet surrounding or downstream from a discharge location where rapid, first stage mixing occurs. The zone of initial dilution is the domain where wastewater and receiving water initially mix.~~

~~(335) "Zone of saturation" means the zone in which all the subsurface voids in the rock or soil are filled with water.~~

~~(336) "100 year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall event with a probable recurrence interval of once in 100 years, as determined by "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971, Revised July 1, 1979", incorporated by reference in Section 3 of this administrative regulation.~~

~~Section 2. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying, subject to applicable copyright law, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.~~

~~(1) 40 C.F.R. Part 116, "Designation of Hazardous Substances", July 1, 2001, U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, DC 20402-9328;~~

~~(2) 40 C.F.R. Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants", July 1, 2002, U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328;~~

~~(3) 40 C.F.R. Chapter I, Subchapter N, Parts 401 through 471, "Effluent Guidelines and Standards", July 2001, U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and~~

~~(4) 40 C.F.R. Part 130, "Water Quality Planning and Management," July 2001, U.S. Environmental Protection Agency, U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, DC 20402-9328.~~

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

~~(a) "Rainfall Frequency Values for Kentucky, Engineering Me-~~

~~morandum No. 2, April 30, 1971; Revised June 1, 1979"; Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection, Bureau of Natural Resources, Division of Water Resources;~~

~~(b)~~] "Combined Sewer Overflow Control Policy", 59 Fed. Reg. 18688, April 19, 1994, is incorporated by reference[~~, and~~

~~(c) "Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE)", Page 21-64, January 1997, U.S. Department of Agriculture~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

HENRY C.A. LIST, Deputy Secretary for
LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 14, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2009 at 10 a.m., EST, at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2009, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 June 1, 2009. 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. Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone: (502) 564-3410, fax (502) 564-0111, email: Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter T. Goodmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions used in 401 KAR Chapter 5.

(b) The necessity of this administrative regulation: This regulation is necessary to provide clarity to terms that have special meaning in Chapter 5. The majority of these terms relate to regulations developed under the Clean Water Act. Kentucky is an NPDES delegated state. All NPDES delegated states must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of all water pollution. 401 KAR Chapter 5 establishes administrative regulations for the issuance of permits to construct, modify, and operate facilities which discharge pollutants to waters of the Commonwealth. This regulation provides definitions for terms used in Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides definitions relevant to the control of water pollution.

(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 will correct and update the regulation to make the definitions consistent with the corresponding federal regulations and recent court decisions. This amendment revises ambiguous terms in accordance with KRS 13A. The proposed amendment removes definitions that do not occur in 401 KAR Chapter 5.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to achieve compliance with federal regulations. If the regulation is not amended as proposed, the state regulation will be inconsistent with the corresponding federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 requires the 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.

(d) How the amendment will assist in the effective administration of the statutes: The amendment removes discrepancies between current state and federal regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This regulation affects over 10,000 existing permitted entities including individuals, businesses and governmental organizations. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

a. Individuals: Approximately 170 per year through construction permits for individual family residences and approximately 400 per year through permit re-issuances.

b. Businesses: 1600 per year, primarily through industrial permits, non-public entity sanitary wastewater permits, and storm water coverage issuances.

c. Organizations: 100 per year, primarily through individual sanitary permits issued to non-public organizations such as churches, summer camps, and private social or sporting clubs.

d. State or Local Government: Approximately 200 per year, primarily through construction permits for sewer line extensions. The construction permit requirements for new or expanded treatment facilities affect approximately 20 of these. Approximately 30 require a KPDES discharge permit re-issuance each year.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will use the definitions to interpret the requirements of regulations in 401 KAR Chapter 5.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Under this amendment, individuals, businesses, and organizations are not expected to experience any additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and updated federal regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no cost.

(b) On a continuing basis: There will be no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. This amendment does not change any source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment requires no additional fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly affect fees.

(9) TIERING: Is tiering applied? To the extent that corresponding federal regulations provide for tiering, these amendments are tiered.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems and facilities that discharge pollutants to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit, a KNDOP permit, or a KISOP permit.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Clean Water Act and KRS 224.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to impact revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 122 and 33 U.S.C. 1251-1387.

2. State compliance standards. KRS 224.10-100.

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, 33 U S C. 1251-1387.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

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, EO 2008-507, 2008-531

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 [~~Environmental and Public 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. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes administrative procedures for the issuance of permits for the construction, modification, and operation of facilities authorized by [~~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 not a [~~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 an owner and an operator of a sewage system, except:

(a) A septic tank with a subsurface discharge;

(b) A pretreatment facility regulated by a pretreatment program or intermunicipal agreement, approved pursuant to 401 KAR 5:057; and

(c) An authorization by permit or rule that is prepared to assure that underground injection will not endanger a drinking water supply, pursuant to the Safe Drinking Water Act, 42 U S C.300f-300i, and that are issued pursuant to a state or federal Underground Injection Control program; and

(d) An underground injection control well that is permitted pursuant to 40 C.F R. 144 if:

1. The permit is protective of public health and welfare; and

2. The permit prevents the pollution of ground and surface waters [~~owners and operators of facilities subject to the administrative regulations of this chapter~~].

(2) Unless exempted pursuant to subsection (3)(b) of this section or paragraph (a) of this subsection, a person shall not construct, modify, or operate a facility without having received a permit from the cabinet.

(a) A construction or modification permit shall not be required for maintenance replacement for components of an existing facility or for changes that [~~which~~] do not affect the treatment processes of the facility, but shall be required for replacement of an entire wastewater treatment plant (WWTP).

(b) The operational permit provisions of Section 27 of this administrative regulation shall be satisfied by those facilities that [~~which~~] have a valid KPDES permit [~~issued pursuant to 401 KAR 5:050 to 401 KAR 5:080~~].

(3) This subsection shall apply to an agricultural waste handling system, industrial WWTP and storm water WWTP.

(a) The following requirements shall apply to an agricultural waste [~~wastes~~] handling system [~~systems, as defined by 401 KAR 5:002~~]:

1. An agricultural waste handling system that conveys, stores, or treats [~~Agricultural wastes handling systems which convey, store, or treat~~] manure from a concentrated animal feeding operation [~~operations as defined by 401 KAR 5:002~~] shall:

a. Obtain a permit to construct or modify the facility, pursuant to [~~complying with only~~] Sections 2 and[~~,~~] 24[~~, and 29(1)(h) and (i)~~]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,

a. Obtain permits to construct, modify, or operate the facility pursuant to [~~this administrative regulation complying with only~~] Sections 2, 24, 25, 27, and 29(1)(h) and (i) of this administrative regulation; and

b. Obtain a Kentucky No Discharge Operational Permit (KNDOP). [~~A KPDES permit shall not be required for these facilities.~~]

(b) The following shall apply to industrial wastewater treatment plants (IWWTPs) [~~as defined by 401 KAR 5:002~~]:

1. An IWWTP with a closed loop system or a system that uses spray irrigation for disposal shall:

a. Obtain a KNDOP permit;

b. Comply with Sections 2, 25, 27, and 29(1)(e) through (h) of this administrative regulation;

c. Not be required to obtain a permit to construct or modify the facility [~~IWWTPs with closed loop systems shall obtain a KNDOP complying with only Sections 2, 25, 27, and 29(1)(e) through (g) of~~

~~this administrative regulation and any other applicable standard or requirements of 401 KAR Chapter 5. A KPDES permit shall not be required for these facilities~~].

2. An IWWTP [~~IWWTPs~~] 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 any other applicable standard or requirement [~~all other requirements~~] of 401 KAR Chapter 5, and

d. Not be required to obtain a permit to construct or modify the facility.

3. A sewer line that conveys wastewater to an IWWTP [~~Sewer lines which convey wastewater to IWWTPs~~] shall not be required to obtain a construction permit.

(c) The following requirements shall apply to a WWTP that collects, conveys, or treats [~~WWTPs which collect, convey, or treat~~] only storm water:

1. A permit to construct or modify the facility shall not be required for a WTTP that collects, conveys, or treats [~~WWTPs which collect, convey, or treat~~] only storm water and discharges [~~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~~].

a. These facilities shall[~~, however,~~] comply with 401 KAR 5:035 [~~5:026~~] through 5:080 and 10:026 through 10:031.

b. 401 KAR 5:060 establishes if [~~further specifies when~~] these facilities shall [~~are required to~~] obtain a KPDES permit.

2. A WTTP that collects, conveys, or treats [~~WWTPs which collect, convey, or treat~~] only storm water and does [~~do~~] not discharge into the waters of the Commonwealth shall obtain an operational permit pursuant to [~~under this administrative regulation, complying with only~~] Sections 2, 25, 27, and 29(1)(e) through (h)[~~(g)~~] of this administrative regulation. [~~A 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 pursuant to [~~required by~~] Section 3 of this administrative regulation, applicable construction permit fees pursuant to [~~required by~~] Section 5 of this administrative regulation, applicable modification or operating permit fees, and plans and specifications for the proposed construction or modification pursuant to [~~required by~~] Section 6 of this administrative regulation.

(a) For construction of a sewer line extension [~~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 of a WWTP or WWTP with a sewer line [~~projects for WWTPs or WWTPs with sewer lines~~] with a direct discharge, the applicant shall submit or shall have submitted,

1. The completed KPDES applications pursuant to [~~required by~~] 401 KAR 5:060; and

2. 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 a WWTP construction project [~~projects~~] without a discharge other than an agricultural waste handling system [~~systems~~], the applicant shall submit:

1. A completed Construction Permit Application for Wastewater Treatment Plant, Form W-1; and

2 [~~.~~] 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 an operational permit [~~permits~~] or renewals of a Kentucky No Discharge Operational Permit (KNDOP) [~~Permits (KNDOPs)~~] other than an agricultural waste handling system [~~systems~~], the applicant shall submit a completed Kentucky No Discharge Operational Permit Application, Form ND.

(e)1. For construction, renewal, modification, or operation of agricultural wastes handling systems that do not discharge and do not intend to discharge, the applicant shall submit a completed Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B.

2. For a construction approval, an applicant [~~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 notice of intent for coverage under a general permit issued pursuant to 401 KAR 5:055 [~~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 5:060~~].

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

(2) Signatures.

(a) An application [~~Applications~~] and all reports required by the permit [~~permits~~] shall be signed by the responsible corporate officer or the person having primary responsibility for the overall operation of the facility.

1. For a municipality, state, federal or other public agency, the signee shall be a principal executive officer or ranking elected official or the designee.

2. 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. A [~~Any~~] person signing a document in accordance with [~~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; Construction Permit Supporting Information. For those facilities required to submit a Construction Permit Application for Wastewater Treatment Plant or Construction Permit Application for Sewer Line Extensions, the following information [~~items~~] shall be submitted [~~as a part of the application or~~] with the application pursuant to [~~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)(a) The applicant shall identify who will inspect and certify that the facility under construction conforms to [~~with~~] the plans and specifications approved by the cabinet in accordance with this administrative regulation.

(b) Facilities designed by an engineer shall be inspected and certified by an engineer[~~.~~]

(2) The applicant shall provide:

(a) An estimate for the cost of the facility and the sources of project funding;[~~.~~]

(b)[~~(3) The applicant shall provide~~] A USGS 7.5 minute topographic map with the proposed project site identified,[~~.~~]

(c) The North American Datum 1983 (NAD 83), degree, minutes, and seconds measurement of the proposed project's latitude and longitude; and

(d)[~~(4) The applicant shall provide~~] An estimate, and the basis for the estimate, for the average daily flow added by the proposed project,[~~.~~]

(3)[(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 a 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.[.]

(4)[(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.

(a) If the information in this subsection is not submitted prior to the formal submittal, the information shall be submitted with the construction application.

(b) 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.

(c) The preliminary determination shall not be a guarantee of final permit limits and may be changed as a result of information presented during the public notice phase of the KPDES permitting procedure.

(d) The preliminary effluent limits shall be [are] contingent upon the validity, accuracy, and completeness of the following information that the applicant shall submit [submitted by the applicant]:

1 [(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;

2 [(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 regional facility plan or water quality management plan[. The cabinet shall then make a final determination on the compatibility of the project with the plan];

3 a [(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.

b. 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]

4 [(d)] For a WWTP project [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.

a. The distance criteria for determining availability shall not apply to a WWTP [WWTPs] with an average daily design capacity less than or equal to 1,000 gpd.

b. The distance shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow; and

5. An estimate and the basis for the estimate of the average daily flow added by the proposed project;

(5)[(7)] For a WWTP project [projects], the applicant shall submit the following influent design values:

(a) Average daily flow;

(b) Peak daily flow;

(c) Peak hourly flow;

(d) Peak instantaneous flow;

(e) [Influent] BOD;

(f)[(e)] Influent suspended solids; [and]

(g) Phosphorus; and

(h)[(f)] Ammonium nitrogen (NH_3-N). [of the influent.]

(6)[(8)] For a WWTP project [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 that [which] comes between the point of discharge and a blue line stream;[.]

(7)[(9)] For a WWTP project [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;[.]

(8)[(10)] For a WWTP project [projects], the applicant shall provide a sludge management plan which includes the method of sludge processing and ultimate sludge disposal.[.]

(9)[(11)] For a WWTP project [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; and[.]

(10)[(12)] For a WWTP project [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 calculations [criteria] used to size the unit processes.

Section 4. Application; Preliminary Considerations. (1) A permit shall not be granted to a [any] facility that [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 new open-top component of a WWTP shall not be located within 200 feet of an existing dwelling or property line; except:

(a) A WWTP that serves an individual residence shall not be required to be at least 200 feet from the dwelling that it serves; and

(b) An open-top component of a WWTP may be located within 200 feet of another dwelling that the WWTP does not serve or a property line if:

1. The WWTP or component is enclosed within a building that controls odors and dampens noise; or

2. The applicant demonstrates that an equivalent method for noise and odor control shall be provided [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 another dwelling which 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) A [Any] discharge point or [and] direct discharges into a wellhead protection area shall comply with Water Policy Memorandum No. 84-02, [("Five Mile Limit Policy, if that public drinking water well or spring is under the direct influence of surface water"), incorporated by reference in Section 29 of this administrative regulation].

(4) The initial suitability of a [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 shall [may] consider:

(a) The distance to the nearest dwelling;[-]

(b) Distance to water intake used for a public water supply,[-]

(c) Downstream land use,[-]

(d) Physical characteristics and current use of the stream,[-]

(e) Physical characteristics of the proposed spray field including karst topography,[-]

(f) Need for easements,[-]

(g) Location of property boundaries;[-] and

(h) 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.

(a) The cabinet shall accept a groundwater tracer study or a proposal for a groundwater tracer study if it is sufficiently scientifically rigorous to:

1. Establish if a hydrologic connection exists with surface waters that may result in additional or more stringent permit limitations,

2. Establish if a hydrologic connection exists with domestic water supply intakes within five (5) miles, and

3. Establish if a hydrologic connection exists with drinking water wells within five (5) miles.

(b) The cabinet shall notify that applicant of the cabinet's acceptance or denial of a proposed groundwater tracer study.

(c) If the cabinet accepts a proposal for a groundwater tracer study, the applicant shall conduct the groundwater tracer study and submit the completed groundwater tracer study to the cabinet.

(d) The cabinet shall issue, deny, or modify the permit based upon the findings of a scientifically rigorous groundwater tracer study [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 approvable].

(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.

(a) Permits to construct, expand, or operate a sewage system shall require connection to a regional facility if [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.

(b) The distance criteria to determine if a regional facility is available shall be measured along the most feasible route of connection to a point where the downstream sewer has capacity to carry the additional flow.

(7) Pursuant to 401 KAR 5:300, the cabinet may coordinate issuance of a construction permit for WWTPs that [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 shall be [are] considered in the issuance of the construction permit.

(a) The cabinet may also coordinate issuance of construction approval for the associated sewer lines with the issuance of the construction permit for the WWTP.

(b) The cabinet may condition or deny the construction permit based on those public comments.

(8)(a) The cabinet shall issue a notice of deficiency for the deficiencies in the application, fees, supporting information, or plans and specifications.

(b) Failure of the applicant to respond to a notice of deficiency within thirty (30) days shall result in the application being terminated without the issuance of a construction permit.

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 that [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.

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

(5) Fees established in this section shall not apply to an agricultural wastes handling system [systems] or renewals of KNDOP permits.

(6) The WWTP fee shall apply to the WWTP project and [any] sewers or pump stations located on the plant property.

(a) A sewer fee shall apply to all sewers, force mains, and pump stations that [which] are bound together as one (1) set of plans.

(b) 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 pursuant to 26 U.S.C. 501(c)(3) [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 cabinet approval is obtained, changes shall not be made to the plans and specifications that [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.

(6) If a proposed facility's design capacity is less than 10,000 gpd, the cabinet may require the plans to be prepared, stamped, signed, and dated by a professional engineer if there is not sufficient operating data available from previous similar installations. Operation data shall demonstrate water quality standards have not been violated and there have not been significant operational problems.

Section 7. Design Considerations. (1)(a) Facilities, except an extended aeration package WWTP [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].

1. Deviations from the [“]Ten States' Standards[”] requirements shall [may] be approved if the applicant submits a written request

for a deviation with the basis for the request.

2. The basis for the deviation request shall be supported by current engineering practice. Some references to current engineering practice may be found in the [any "Manual of Practice" published by the Water Environment Federation and "]Wastewater Engineering Treatment, Disposal, Reuse[", Third Edition,] by Metcalfe and Eddy, Inc.

3. Design calculations and other supporting documentation to support the deviation shall be submitted to the cabinet.

(b) Other practices may be required by the cabinet based on 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 not occurred and that water quality standards have not been violated.

(2) [Extended aeration 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 shall [will]:

(a) Protect those minimum conditions listed in 401 KAR 10:031 that are applicable to all waters of the Commonwealth [found in 401 KAR 5:031];

(b) Not cause those waters designated [classified] by 401 KAR 10:026 or categorized by 401 KAR 10:030[5:026 or 5:030] to be of lesser quality than the numeric criteria applicable to those waters in 401 KAR 10:031[5:031] or the requirements of 401 KAR 10:030 [5:030]; and

(c) Be in accordance with any [general or particular] facility requirement established in [mandated by] 401 KAR Chapter 5.

(3)[(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.

(a) The flow measuring device shall measure all flow discharged by the WWTP including any bypasses.

(b) An indicating, recording, and totalizing flow measuring device shall be installed at each large WWTP.

(c) A flow measuring device [devices] for new large WWTPs shall meet the requirements of Section 12 of this administrative regulation.

(4) A [(5) bypass or overflow structure [structures] of any type shall not be constructed in a [any] sewer line or pump station or at a [any] WWTP unless:

(a) Construction of the bypass or overflow structure is necessary to prevent loss of life, personal injury, or severe property damage and there is no feasible alternative; or

(b) The bypass or overflow structure is for essential maintenance and it does not cause effluent limitations or water quality standards, as established in 401 KAR 10:031, to be exceeded [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 other person.

(2) The applicant shall submit letters from:

(a) The owner of the sewer line extension stating that the owner shall [will] accept operation and maintenance responsibilities for the sewer line extension as [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)(a) 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 shall not be [is not] subject to excessive infiltration or excessive inflow.

(b) The cabinet may deny a sewer line extension for that portion of the sewer system if the portion of the system is subject to excessive infiltration or excessive inflow unless a plan for investigation and remediation that [which] addresses these conditions has been submitted [approved] and is being implemented.

(4)(a) The applicant shall demonstrate that the WWTP that [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.

(b) 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 that [which] addresses these conditions has been submitted [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-exfiltration or low pressure air testing method.

1. An infiltration-exfiltration test shall be performed with a minimum positive head of two (2) feet.

2. A deflection test shall be performed for each new flexible pipe; pipe deflection shall not exceed five (5) percent.

3. Each new manhole shall be tested for watertightness.

(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 consolidation 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) A gravity sewer line [lines] and a force main [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.

(a) 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.

(b) If the specifications allow only plastic pipe, a roughness coefficient of 0.011 or a "C" factor of 120 may be used.

(c) A roughness coefficient [coefficients] between 0.013 and 0.011 may be used [considered] for other pipe materials if sufficient documentation of experimental testing is submitted to the cabinet and if the testing supports the use of the design roughness coefficient [approved by the cabinet].

(9) A gravity sewer line [lines] and a force main [mains] shall have a minimum of thirty (30) inches of cover or provide comparable protection.

(10) If a gravity sewer line [lines] and a force main [mains] are to be constructed in fill 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 diameter [size] for a conventional gravity sewer line [lines] shall be eight (8) inches, except that,

(a) The minimum diameter for an extension to an eight (8) inch or larger sewer line if a future extension is not feasible shall be six (6) inches;

(b) The minimum diameter for an extension to a six (6) inch sewer line shall be six (6) inches; and

(c) A sewer line shall be sized based upon engineering calculations consistent with current engineering practices [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 that [which] serve a single-family residence [residences].

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

(a) A gravity sewer that [sewers which]:

1. Discharges [Have a diameter of less than eight (8) inches and discharge] directly to the sewer main; and

2. Serves a single building; and [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) A force main sewer [sewers], regardless of the location of the pump station that [which]:

1. Discharges [Have a length of less than 500 feet and discharge] directly to a gravity sewer main; and

2. Serves a single building [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].

(14) Except as provided in paragraph (b) of this subsection, a sewer line [Sewer lines] shall be located at least fifty (50) feet away from an intermittent or perennial stream [a stream which appears as a blue line on a USGS 7.5 minute topographic map] except where the sewer alignment crosses the stream.

(a) The distance shall be measured from the top of the stream bank.

(b) The applicant may request a variance from the requirement established in this subsection [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) A gravity sewer line [lines] and a force main [mains] that cross streams shall be constructed by a method that maintains [methods which maintain] normal stream flow and allows [allow] for a dry excavation.

(a) Water pumped from the excavation shall be contained and allowed to settle prior to reentering the stream.

(b) Excavation equipment and vehicles shall operate outside of the flowing portion of the stream.

(c) Spoil material from the sewer line excavation shall not be allowed to enter the flowing portion of the stream.

(16) A pump station wetwall [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) A pump station wetwall [wetwells] shall have a vent.

(18) A pump station [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 a proposed pump station [stations].

(21) A simplex design shall be used only for a pump station that serves [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 political subdivision facilities with KISOPs [KIMOPs].

(1) For each regional WWTP, the cabinet shall review the WWTP's reported monthly flows and organic loads for the most recent twelve (12) months. If the annual 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 shall [may] deny the approval of a [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 shall [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 review the request and if justified, shall 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 that [which] address the condition.

(3) The cabinet shall deny a sewer line extension that is [extensions which are] of sufficient flow or add sufficient load to exceed the remaining design capacity of the WWTP or exacerbate water quality problems until the owner of the WWTP commits to addressing the design capacity or water quality problem [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 that [which] complies with subsections (5) and (6) of this section:

(a) A regional WWTP [WWTPs] with a reported average flow [flows] or organic load that exceeds [loads which exceed] the percent identified in subsection (1)(a) or (b) of this section, as applicable, and a political subdivision KISOP facility that [KIMOP facilities which] either:

1. Receives [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. Receives [Receive] more than 120 gallons per capita per day of sewage flow based on the annual average of daily flows exclusive of industrial flow; and[.]

(b) A regional WWTP [WWTPs], sewer system [systems] served by a regional WWTP, or a political subdivision facility with a KPSOP is [facilities with KIMOPs 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) A schedule for completion of the necessary modifications shall also be prepared.

(b)1 The study and schedule shall be submitted to the cabinet for review and approval.

2. Approval shall be based on cost and length of time required to correct the infiltration-inflow.

(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 if the rehabilitation locations and methods cannot be established by other analysis;

(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)(a) The owner of the facility shall complete the necessary rehabilitation or modifications in accordance with the [approved]

schedule to which the applicant and cabinet agree.

(b) The cabinet may deny a further sewer line extension [extensions] if the owner is not meeting the schedule or is not making [acceptable] progress that follows the [toward meeting the approved] schedule.

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

(1) A bar screen shall be provided for each plant, except those with trash traps pursuant to Section 14 of this administrative regulation.

(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) A minimum detention time of four (4) hours based on the average design flow;[,]

(b) A surface overflow rate of less than 1,000 GPD/ft^2;[,] and

(c) A solids loading of less than thirty-five (35) lb/ft^2 based on the peak daily design flow rate.

(5) A positive sludge return shall be provided.

(6)(a) A source of water shall be provided for cleanup.

(b) 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 a large WWTP [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.

(a) 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.

(b) If a step aeration ladder is used, a minimum drop of nineteen (19) feet shall be provided.

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

(13) A WWTP that serves [(14) WWTPs which serve] restaurants or other similar establishments where food is prepared and served and food grinders are used shall be designed to treat the additional BOD loading.

(14)[(15)] Effluent discharge piping for a new WWTP [WWTPs], except a regional facility [facilities], shall be designed to transport sewage to facilitate a future connection to a regional facility.

(15) A [(16)] used package extended aeration WWTP [WWTPs] may be used if the manufacturer or a professional engineer certifies that the tank is structurally sound and all mechanical equipment has been reconditioned.

Section 11. Disinfection. (1) All WWTPs shall have a disinfection process that [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 system.

1. 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.

2. A WWTP [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.

1. The flow equalization basin shall meet the requirements of Section 17 of this administrative regulation.

2. 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.

3. A WWTP [WWTPs] shall also have a dechlorination system if necessary to meet the effluent limits.

(d) Other disinfection processes may be approved if they provide [providing] equivalent treatment [may be approved by the cabinet].

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

Section 12. Requirements for Flow Measuring Devices. This section shall apply to a new large WWTP [WWTPs].

(1)(a) Each flow measuring device shall be capable of measuring the anticipated flow, including variations, with an accuracy of ± ten (10) percent.

(b) The flow measuring device shall measure all flow received at the WWTP.

(c) An indicating, recording, and totalizing flow measuring device shall be installed at each large WWTP.

(2)(a)[(1)(a)] 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. A WWTP [WWTPs] that stores[store] and hydrographically controls [control] the release of effluent;

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

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

4. A WWTP [WWTPs] with the capability to bypass a treatment process; and

5. A WWTP [WWTPs] with more than one (1) discharge point.

(3)[(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 not 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 a V-notch weir [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 a weir [weirs] other than a suppressed, rectangular weir [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;

(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)1. The cross-sectional area of the approach channel shall be at least eight (8) times the area of the nappe.

2. 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 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.

(4)[~~(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 if necessary to maintain laminar flow;

(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 H_a and H_b to determine if submergence occurs.

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

Section 13. Reliability Categories

(1) A WWTP design shall:

(a) Provide sufficient treatment units to allow for cleaning and repair without causing a violation of effluent limitations or a bypass from the sewer system or WWTP; and

(b) Provide storage or treatment capability sufficient to:

1. Contain or treat the volume of the largest tank if that tank is out of service; and

2. Contain or treat the flow received during the time needed to drain, complete cleaning, and accomplish an anticipated repair without causing a permit violation or bypass of a treatment process.

(2) The cabinet shall determine the reliability grade of a WWTP based on the water quality use designation of the receiving stream, pursuant to 401 KAR 10:031.

(a) A Grade A WWTP shall have:

1. Treatment units and alternate power sufficient for the continuous use of all treatment processes and disinfection, with the exception of alternate power for the aeration equipment used in an activated sludge process; and

2. Full alternate power capacity for a discharge to a stream segment within five (5) miles of a public water supply intake.

(b) A Grade B WWTP shall have:

1. Treatment units sufficient for the continuous use of the preliminary, primary, and secondary treatment processes and disinfection; and

2. If an intermediate or large facility, alternate power sufficient for the continuous use of the preliminary, primary, secondary treatment, and disinfection processes, with the exception of alternate power for the aeration equipment used in an activated sludge process; or

3. If a small facility, a design that enables the small facility to connect to an emergency generator.

(c) A Grade C WWTP shall have:

1. Treatment units sufficient for the continuous use of the preliminary treatment, primary treatment, and disinfection processes; and

2. If an intermediate or large facility, alternate power sufficient for the continuous use of the preliminary treatment, primary treatment, and disinfection processes; or

3. If a small facility, a design that enables the small facility to connect to an emergency generator.

(d) If alternate power is required pursuant to this subsection:

1. Alternative power shall be provided from the connection to at least two (2) independent power sources or an emergency generator; or

2. The cabinet may approve alternative measures for a medium or small facility if:

a. The applicant can demonstrate that those measures provide protection comparable to alternative power; and

b. The receiving stream is not an OSRW, within five (5) miles of a public water supply intake, or within five (5) miles of a wellhead protection area.

(3) The following WWTPs shall meet the requirements for a Grade A WWTP:

(a) A WWTP approved to discharge to a water body designated as an Outstanding State Resource Water pursuant to 401 KAR 10:031.

(b) A WWTP approved to discharge into a sinkhole or disappearing stream; and

(c) A WWTP approved to discharge within five (5) miles of a public water supply intake or discharge directly into a wellhead protection area.

(4) A WWTP shall meet the requirements for a Grade B WWTP if it discharges within five (5) miles upstream of the head of an embayment if the lake is at normal elevation.

(5) Except as provided in subsection (6) of this section, a WWTP shall, at minimum, meet the requirements for a Grade C WWTP.

(6) The cabinet shall not assign a grade to:

(a) A WWTP treating less than or equal to 1,000 gallons per day; or

(b) A WWTP serving an individual family residence. [~~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 ($7Q_{10}$) 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 $7Q_{10}$ 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 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. A trash trap [~~traps~~] shall not be used on a WWTP [~~WWTPs~~] with a design capacity of larger than 100,000 gpd. A trash trap [~~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 a small WWTP [~~WWTPs~~], the trash trap volume shall be fifteen (15) percent of the average daily design flow; and

(2) For an intermediate or large WWTP [~~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 shall be interpolated.

WWTP Capacity (GPD)	Trash Trap Volume (Gallons)
10000	1500
20000	2400
30000	2900
40000	3200
50000	3430
60000	3600
70000	3740
80000	3840
90000	3920
100000	4000

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 900 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) An underdrain [~~Underdrains~~] shall be spaced on ten (10) foot centers or less

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

(1) Rapid sand or mixed media filter loadings shall not exceed one (1) gallon per minute per square foot of filter surface area.

(2) If flow equalization is provided, the allowable loading may be increased to two (2) gallons per minute per square foot.

(3) A backwash system shall be provided.

Section 17. Requirements for Flow Equalization Basins. (1) A flow equalization basin [~~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 or [~~nor~~] similar flow pattern is not available, the flow equalization basin volume shall be based on the following formula:

$$V = (1 - \frac{t}{24}) \times Q$$

Where

V is the required volume for the flow equalization basin;

t 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) A flow equalization basin [~~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 a flow equalization basin [~~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:

(a) Thirty-five (35) pounds per day per acre of lagoon surface for nonaerated primary lagoon systems;[~~,~~]

(b) Fifty (50) pounds per day per acre of lagoon surface for nonaerated polishing lagoons;[~~,~~] and

(c) 150 pounds per day per acre of lagoon surface for aerated lagoons.

(2)(a) The lagoon design submittal shall provide details on the aeration system proposed including:

1. The type, location, and capacity of the aeration units;
2. The operating depth;
3. The area of the lagoon at the operating depth;
4. Permeability and thickness of the lagoon liner;
5. Anticipated ultimate wastewater flow; and
6. Influent wastewater characteristics.

(b) A new lagoon system [~~systems~~] shall be designed to treat a raw wastewater BOD of at least 240 mg/l.

(c) The lagoon design shall be evaluated by the method established [~~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) A lagoon [~~Lagoons~~] shall be at least 200 feet from any present [~~or future~~] residence or adjacent property line.

(4) A nonaerated primary lagoon [~~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) Applicants proposing [~~The cabinet may approve~~] a lagoon with an embankment slope steeper than [~~1:3 (~~]one to three (1:3) shall provide[~~) if supported by~~] geotechnical and slope stability studies to support the design.

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

Section 19. Additional Requirements for WWTPs That [~~Which~~] Serve Schools. In addition to the requirements of Sections 10 to 18 of this administrative regulation, the following requirements shall apply to a WWTP that serves [~~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; and[~~-~~]

(3) The secondary clarifier shall be sized to provide a maxi-

mum surface loading, at the average design flow, of 300 GPD per square foot of clarifier surface area. If a [~~no~~] flow equalization basin is not 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 That [~~Which~~] Serve Multifamily Residential Developments. In addition to the requirements of Sections 10 to 18 of this administrative regulation, the following requirements shall apply to a WWTP that serves a [~~WWTPs which serve~~] multifamily residential development [~~developments~~]. A multifamily residential development [~~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 organic 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 That [~~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 a WWTP that proposes [~~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. Applicants proposing higher application rates shall provide [~~may be approved if justified by a~~] detailed design based on site-specified [~~site specific~~] information.

(2) The following plans and specifications shall be signed, sealed, and dated by a professional engineer licensed in Kentucky:

(a) Plans for a WWTP with a design capacity of more than 1,000 gallons per day that propose an application rate greater than 1,000 gallons per acre per day; and

(b) Plans that propose a final slope equal to or greater than ten (10) percent.

(3) A spray field that has a slope greater than twenty-five (25) percent on any portion of the spray field shall not be permitted.

(4) The soil of a spray irrigation field shall have an average saturated hydraulic conductivity of not less than six-tenths (0.6) inch per hour, as established by:

(a) The saturated hydraulic conductivity value provided by an NRCS soil survey; or

(b) A saturated soil test of the spray field.

(5) The spray field shall have less than a six (6) percent slope unless:

(a) The average saturated hydraulic conductivity for the spray field is more than six (6) inches per hour; and

(b) The average soil depth of the spray field is at least twenty-four (24) inches.

(6) The spray irrigation field shall have sufficient vegetative growth to promote absorption, evaporation, and transpiration.

(a) Vegetative growth shall be perennial.

(b) Vegetative growth shall cover not less than ninety-five (95) percent of the spray field area.

(7) [~~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.

(8)[~~(5)~~] A spray irrigation field for an individual residence shall have a temporal or physical barrier that inhibits human contact with the airborne spray.

(9)[~~.(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.

(10) Setbacks.

(a) A construction permit shall not be issued if a portion of the spray field is closer than 200 feet from an existing dwelling.

(b) A portion of a spray filed shall not be closer than the minimum setback requirements for a leach bed as established in 902 KAR 10:085, Section 8.

(c) If a setback provision of 902 KAR 10:085, Section 8, is less stringent than the setback requirements of this subsection, the more stringent setback shall apply.

(11) Effluent derived from a wastewater that contained human waste shall not be applied to an area in active production of food for human consumption.

(12) A spray irrigation field for an individual residence shall have the following additional requirements:

(a) At least three (3) sprinkler heads;

(b) A spray area larger than 0.19 acre; and

(c) A spray area larger than 0.38 acres if the slope is equal to or greater than six (6) percent.

Section 22. Requirements for WWTPs that[~~which~~] Serve an Individual Residence. (1) A wastewater plant[~~plants~~] intended to serve an individual residence and eligible for a general KPDES permit pursuant to[~~under~~] 401 KAR 5:055 shall have, at minimum, the following treatment processes:

(a) Extended aeration;[~~WWTP,~~]

(b) Filtration,[~~,~~] and

(c) Disinfection.

(2) The WWTP shall be capable of meeting the final effluent limitations of the general permit.

(3) The WWTP shall be capable of meeting secondary treatment requirements of 401 KAR 5:045 prior to filtration.

(4) The cabinet may allow an alternative or additional treatment process to extended aeration if an alternative process is necessary process is necessary to meet the requirements of a general permit issued pursuant to 401 KAR 5:055.

(5)[~~without additional treatment units.~~

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

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

(7) Setback restrictions for a treatment system serving an individual residence shall be less than the setback restrictions established by 902 KAR 10:085, Section 8, Table 7.

(8) An applicant may submit only one (1) of the three (3) copies of the plans and specification required pursuant to Section 6 of this administrative regulation.

Section 23. Additional Requirements for extended aeration WWTPs that[~~which~~] Serve Car Washes or Laundries.[~~In addition to the requirements of Sections 10 to 18 of this administrative regulation,~~] An extended aeration WWTP that serves a[~~WWTPs which serve~~] commercial or fleet car wash[~~washes~~], commercial laundry[~~laundries~~], or laundry[~~laundries~~] serving commercial or institutional establishment[~~establishments~~], shall have an average daily flow from other biochemically degradable sources that is at least four (4)[~~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) 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.~~]

(b) If construction is not commenced within the twenty-four (24)[~~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)(a) The permittee shall submit the certification from an[~~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.

(b) The permittee shall certify the completion of construction[may submit the certification] for a project[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 401 KAR Chapter 4 through 11[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 not be [no] deviations from the plans and specifications submitted with the application or the conditions specified in this subsection, unless authorized in writing by the cabinet; and[.]

2. The permittee shall ensure that the effluent is of satisfactory quality to prevent violations of the standards in 401 KAR Chapter 5 and 401 KAR Chapter 10. [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 a construction permit[permits] issued to a WWTP that discharges[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; and

2.[3.] Issuance of this permit shall[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.

(4)[(5)] The construction permit for agricultural wastes handling system[systems] may be used as an interim operational permit until the operational permit is issued or denied.

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

Section 25. Kentucky No Discharge Operational Permits (KNDOPs) A Kentucky No Discharge Operational Permit (KNDOP) shall only be issued to a facility that does not discharge and does not intend to[(1) Applicability. These permits are issued to facilities which do not] discharge to waters of the Commonwealth, including agricultural wastes handling systems and facilities that[which] dispose of their effluent by spray irrigation.

(1) Nutrient Management Plans. An animal feeding operation shall have a nutrient management plan consistent with the Agriculture Water Quality Act, KRS 224.71-100 through 224.72-145 and the NRCS Conservation Practice Standard Code 590 for Kentucky.

(2) The plan shall, to the extent applicable, also address the following elements:

(a) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

(b) Ensure proper management of animal mortalities to ensure that they shall not be disposed of in liquid manure, storm water, or process wastewater storage or treatment system;

(c) Ensure that clean water shall be diverted from the production area;

(d) Prevent direct contact of confined animals with waters of the Commonwealth;

(e) Ensure that chemicals and other contaminants handled on-site shall not be disposed of in manure, litter, process wastewater, or storm water storage or treatment system, unless specifically designed to treat chemicals and other contaminants;

(f) Identify site-specific conservation practices to be implemented to control runoff of pollutants to waters of the Commonwealth;

(g) Identify protocols for testing of manure, litter, process wastewater, and soil;

(h) Establish protocols to land apply manure, litter, or process wastewater in accordance with site-specific nutrient management practices that ensure agricultural utilization of the nutrients in the manure, litter, or process wastewater; and

(i) Identify records that shall be maintained to document the implementation and management of the minimum elements described in paragraphs (a) through (h) of this subsection.

(3) Additional Measures for Animal Feeding Operations.

(a) Visual inspections. There shall be routine visual inspections of the production area. The following shall be visually inspected:

1. Weekly inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structure;

2. Daily inspection of drinking water or cooling water lines; and

3. Weekly inspections of the manure, litter, and process wastewater impoundments. The inspection shall note the level in liquid impoundments as indicated by the depth marker in paragraph (b) of this subsection.

(b) Depth marker. An open surface liquid impoundment shall have a depth marker that clearly indicates the storage capacity.

(c) Corrective actions. A deficiency found as a result of an inspection shall be corrected.

(d) Mortality handling. A mortality shall not be disposed of in liquid manure or process wastewater system and shall be handled in a way that prevents the discharge of pollutants to surface water.

(4) Record Keeping Requirements for the Production Area. Each AFO shall maintain on-site, for a period of five (5) years from the date they are created, a complete copy of the information required by subsection (2)(i) of this section, and the records specified in paragraphs (a) through (f) of this subsection. The AFO shall make these records available to the cabinet for review upon request.

(a) Records documenting the inspections required pursuant to subsection (3)(a) of this section;

(b) Weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the depth marker pursuant to subsection (3)(b) of this section;

(c) Records documenting an action taken to correct deficiencies required pursuant to subsection (3)(c) of this section. Deficiencies not corrected within thirty (30) days shall be accompanied by an explanation of the factors preventing immediate correction;

(d) Records of mortalities management and practices used by the AFO to meet the requirements of subsection (3)(d) of this section;

(e) Records documenting the current design of manure or litter storage structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity; and

(f) Records of the date, time, and estimated volume of any overflow.

(5) Recordkeeping requirement for the land application areas.

(a) Each AFO shall maintain on-site a copy of its site-specific nutrient management plan.

(b) Each AFO shall maintain on-site for a period of five (5) years from the date it was created a complete copy of the information required by the permit application Short Form B, the information required by subsection (2)(i) of this section, and the records specified in paragraphs (a) through (i) of this subsection.

(c) The AFO shall make these records available to the cabinet for review upon request.

1. Expected crop yields;

2. The date manure, litter, or process waste water is applied to each field;

3. Weather conditions at time of application and for twenty-four (24) hours prior to and following application;

4. Test methods used to sample and analyze manure, litter, process waste water, and soil;

5. Results from manure, litter, process waste water, and soil sampling;

6. Explanation of the basis for determining manure application rates, as provided in the NRCS Conservation Standard Practice Code 590 for Kentucky;

7. Calculations showing the total nitrogen and phosphorus to be applied to each field, including sources other than manure, litter, or process wastewater;

8. Total amount of nitrogen and phosphorus applied to each field, including documentation of calculations for the total amount applied;

9. The method used to apply the manure, litter, or process wastewater; and

10. Each date of manure application equipment inspection.

(6) If an animal feeding operation does not discharge, does not intend to discharge, and obtains a Kentucky No-Discharge Operational Permit pursuant to this section, the cabinet shall not consider the animal feeding operation a CAFO.

(7) [~~If the permit is issued to the applicant, 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.

(a) A permit[~~Permits~~] may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and 401 KAR Chapters 4 through 11[~~administrative regulations promulgated pursuant thereto~~].

(b) The conditions shall be in writing and shall be treated as part of the permit.

(c) The following conditions shall apply to all KNDOPs.

1.[~~(a)~~] There shall not be a[~~no~~] point source discharge of wastewater from the facility.

2.[~~(b)~~] The permit authorizes operation only of the WWTP described 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.

3.a.[~~(c)~~] The permit shall not be construed as authorizing an[~~any~~] operation that[~~which~~] is otherwise in contravention of a[~~any~~] statute, administrative regulation, ordinance, or order of a[~~any~~] governmental unit.

b. The permit shall not be construed to authorize the creation or maintenance of a nuisance.

4.a.[~~(d)~~] The permit shall be subject to revocation or modification by the cabinet as established[~~set forth~~] in KRS Subchapter 224.10-100[~~224~~].

b. Commencement of a routine point source discharge shall result in a permit revocation.

5. A[~~(e) Any~~] permit shall be issued in accordance with[~~under~~] the provisions of KRS Chapter 224 and 401 KAR Chapters 4 through 11[~~administrative regulations promulgated pursuant thereto~~]. Issuance of the permit shall not relieve the permittee from the responsibility of obtaining any other permits or licenses required by the cabinet and other state, federal, and local agencies.

6.[~~(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.

7.[~~(g)~~] Land application that[~~which~~] results in runoff to a stream shall be[~~is~~] prohibited.

Section 26. Kentucky Intersystem[~~Intermunicipal~~] Operational Permits (KISOPs)[~~(KIMOPs)~~]. A KISOP is[~~These permits are~~] issued to publicly or privately owned sewer systems that[~~which~~] discharge to a WWTP or a sewer system that[~~which~~] is owned by another person.

(1) A KISOP[~~These permits~~] shall not apply to sewer systems with less than 5,000 linear feet of sewer line.

(2) A KISOP shall not apply to a sewer system that discharges to a POTW if the system is subject to a local permit pursuant to the pretreatment program established in 401 KAR 5:057.

(3) A KISOP shall be[~~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 an[~~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) Permits may contain special conditions that in the best professional judgment of the cabinet are necessary to comply with KRS Chapter 224 and 401 KAR Chapters 4 through 11[~~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 operational[~~cabinet's~~] permit shall[~~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 not convey[~~any~~] property rights[~~of any kind~~] or any exclusive privilege.

Section 28. Transfer of Operating Permits. (1) An operating permit shall be issued to the applicant, and the permittee shall remain the responsible party for compliance with the permit until:

(a) A change in ownership certification is submitted by the new owner and the transfer of ownership is acknowledged by the cabinet; or

(b) The current permittee has submitted a change in ownership certification and the transfer has been acknowledged by the cabinet.

(2) A change in ownership certification submitted by the current permittee without the signature of the new owner shall include a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them.

(3) A change in ownership certification shall serve as an application for a minor modification of the operating permit.

Section 29. Alternative Requirements. (1) 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, or transport.

(2) The applicant shall demonstrate that an alternative[~~any alternatives~~] requested by the applicant provides[~~provide~~] sufficient treatment or transport.

Section 30. Material[~~29. Documents~~] Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Recommended Standards for Wastewater Facilities", 2004["~~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";

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

(c) "Construction Permit Application for Wastewater Treatment Plant, DEP 7071-W (2/2009)" [~~(9/96)", Facilities Construction Branch~~];

(d) "Construction Permit Application for Sewer Line Extension, DEP 7071-S (9/96)", Facilities Construction Branch,

(e) "Change in Ownership Certification for Sewer Line Extensions, DEP 7071-CO (9/96)", Facilities Construction Branch;

(f) "Change in Ownership Certification, DEP 7032-CO (2/2009)[~~(9/96)~~]";

(g) "No Discharge Certification, DEP 7032-NDC (2/2009)[~~(9/96)~~]";

(h) "Kentucky No Discharge Operational Permit Application, DEP 7033-ND (2/2009)[~~7032-ND (9/96)~~]";

(i) "Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B, DEP 7033-B-ND (2/2009)[~~7032-B-ND (9/96)~~]";

(j) "Site Survey Request, Kentucky No Discharge Operational Permit for Agricultural Wastes Handling System, DEP 7032-Ag-Site (9/96)";[~~and~~]

(k) "Kentucky Intersystem[~~Intermunicipal~~] Operational Permit Application, DEP 7103 (2/2009)"; and

(l) "NRCS Conservation Practice Standard Nutrient Management Code 590 for Kentucky, NRCS, Kentucky (5/24/01)"[~~(9/96)"~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane[~~14 Reilly Road~~], Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4 30 p m.

HENRY C. A. LIST, Deputy Secretary

For LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 14, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2009 at 10 a.m., EST, at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2009, 5 workdays prior to the hearing, of their intent to attend If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 June 1, 2009. 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: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter T. Goodmann

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes 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. This administrative regulation also establishes a schedule of fees to recover the costs of issuance for certain classes of permits.

(b) The necessity of this administrative regulation: This administrative regulation provides specific requirements for construction and modification of wastewater treatment facilities. This administrative regulation is necessary to implement the goals of KRS 224 to eliminate pollution in the Commonwealth. This administrative regulation is necessary to address environmental goals of KRS 224 that are not covered under federal law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.10-100, which authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny permits to discharge into waters of the Commonwealth, and for the installation, alteration, expansion, or operation of any sewage system. This administrative regulation is consistent with the pollution prevention goals of KRS Chapter 224.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific requirements for several categories of construction permits and for specific requirements for no-discharge ~~operating~~ permits. Additionally, the administrative regulation incorporates application forms relevant to the permitting process by reference.

(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: In Section 1(3)(a)1.a., the requirement to comply with Section 29(1)(h) and (i) is removed because this subparagraph relates to CAFOs. CAFOs discharge or intend to discharge; therefore, a CAFO cannot obtain the no-discharge permits referenced in Section 29(1)(h) and (i). The amendment of Section 2(1)(e) clarifies that KNDOP permits are for those facilities that do not discharge and do not intend to discharge. Section 2(1)(g) clarifies that individual family residences file a notice of intent for coverage under a KPDES general permit. Section 2(1)(h) reflects that intersystem operating permits are not limited to municipal systems Section 3(2) adds lat/long to application requirements. Section 3(4) adds the distance criteria rule associated with "available" that was formerly in 401 KAR 5.002. Section 4 limits application of the Five Mile Policy to wellhead protection areas under the direct influence of surface water. Section 8 clarifies that design criteria is based on influent flow and includes peak flow and phosphorus concentration. Section 10(15) clarifies who may determine if used equipment is properly reconditioned. The amendment of Section 13 applies the most stringent reliability requirements to only the most sensitive water uses and makes the regulation consistent with Ten State Standards' engineering practices. Section 21 establishes additional technical criteria for disposal by spray irrigation, including the prohibition of disposal onto slopes greater than 25 percent. The amendment of Section 22 incorporates the setback distances of Health Department regulations. The amendment of Section 25 adds detail to the requirements for Kentucky No-Discharge Operating Permits. For animal feeding operations, the proposed amendment adds several specific requirements that were previously applied as best professional judgment requirements under the cabinet's authority to include practices necessary for the protection of public health and the environment. Section 28 allows the existing permit holder to apply for a transfer of the permit because of an ownership change. Section 29 clarifies that the cabinet's existing authority to consider alternative measurement for treatment extends to alternate measures of sewage transport.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation to add detailed requirements for animal feeding operations that seek a no-discharge permit. If the regulation is not amended as proposed, the state regulations will remain silent on specific requirements that are needed for the Division of Water to achieve the goals of KRS 224. Additionally, the amendment includes by reference the forms that have been modified to comply with the amended regulation.

(c) How the amendment conforms to the content of the authorizing statutes KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth, and for the installation, alteration, expansion, or operation of any sewage system. The proposed amendment continues to provide for water pollution control as provided in KRS Chapter 224.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the setback requirements for individual residences, and provides specific details on the regulation of animal feeding operations that do not intend to discharge. The details provided in this amendment will aid in carrying out the goals of KRS Chapter 224

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES and KNDOP permitting programs. This administrative regulation potentially affects over 10,000 existing permitted entities including individuals, businesses, and governmental organizations. Not all entities that have existing permits will be affected. Those affected will be entities that seek new or modified permits to construct wastewater facilities and entities that seek no-discharge operating permits. The amendment is

expected to impact the following number of entities:

a. Individuals: 170 per year through construction permits for individual family residences.

b. Businesses: Approximately 25 businesses per year are impacted by the construction permit requirements for new or expanded package treatment plants. Approximately 250 animal feeding operations are affected each year by construction permit requirements or operating permit requirements. The construction permit requirements for sewer-line-extension projects affect an estimated 400 businesses each year. These estimates do not reflect the total number of applications because roughly 25% of businesses are expected to have multiple applications.

c. Organizations: 10 per year, primarily through construction permits issued to non-public organizations such as churches, summer camps, and private social or sporting clubs. These entities apply for a relatively small number of sewer line extensions and package treatment plant permits.

d State or Local Government: Approximately 200 per year, primarily through construction permits for sewer line extensions. The construction permit requirements for new or expanded treatment facilities affect approximately 20 of these. The number of applications is larger than the number of affected entities due to multiple applications from the same governmental entity.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will have to submit a revised version of an application form that they currently submit. This amendment clarifies that those animal feeding operations requiring a permit shall submit a nutrient management plan as part of the permit application process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) None of the entities identified in question (3) are expected to incur an increased cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individual family residence applicants will not be confused by potential inconsistencies between existing Health Department setbacks and the setback requirements of the Division of Water. Animal feeding operations will have an option for a no-discharge permit that is less costly than a discharge permit issued pursuant to the Clean Water Act. Animal feeding operations are expected to benefit from better protection of land and water as a result of this regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation.

(a) Initially: No additional cost.

(b) On a continuing basis: No additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. There is no change in source of funding for this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment requires no additional fees or funding for support.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not affect fees directly or indirectly.

(9) TIERING: Is tiering applied? Permit requirements and fees are tiered based upon the nature and size of the wastewater discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects wastewater treatment systems that discharge to waters of the Commonwealth or operate sewage systems. This administrative regulation affects all units of state or local government that have a KPDES discharge permit or a KNDOP permit for wastewater.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation
KRS 224.10-100.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to generate additional state or local government revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not expected to generate additional state or local government revenue.

(c) How much will it cost to administer this program for the first year? The amendment is not expected to create any additional cost.

(d) How much will it cost to administer this program for subsequent years? The amendment is not expected to create any additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-).
Expenditures (+/-):
Other Explanation:

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 5:055. Scope and applicability of the KPDES Program.

RELATES TO: KRS 224.01-010, 224 01-070, 224.01-400, 224.70-100, 224.70-120, 224.99-010, 33 C.F.R.[~~Part~~] 153, 40 C F.R. 122, 123.44, 144,[~~122 21(n)(2), Part~~] 300, 33 U.S.C. 1251 - 1387, 42 U S C 300f – 300j, EO 2008-507, 2008-531[~~et seq., 1342~~]

STATUTORY AUTHORITY: KRS 224 10-100, 224.16-050, 224 18-100, 224.70-100,[~~33 C.F.R. Part 153,~~] 40 C.F.R. 122 21,[~~(n)(2), Part~~]300, 33 U.S.C. 1251 - 1387[~~et seq., 1342~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes[~~provides that~~] the[~~Environmental and Public Protection~~] cabinet to[~~may~~] require for persons discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224.16-050(1) authorizes[~~provides that~~] the cabinet to[~~may~~] issue federal permits pursuant to 33 U.S.C.[~~Section~~] 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. [~~Section~~] 1251 – 1387[~~et seq.~~] subject to the conditions imposed in 33 U.S C [~~Sections~~] 1342(b) and (d). KRS 224.16-050(1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C.[~~Sections~~] 1311, 1312, and 1326(a) [~~Further,~~] KRS 224.16-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement or other condition that[~~which~~] is more stringent than the effluent limitation, monitoring requirement or other condition that[~~which~~] would have been applicable under the federal regulation if the permit were issued by the federal government. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation

establishes[~~contains~~] the scope and applicability of the KPDES program and identifies categories of point sources required to obtain a KPDES permit; requirements pertaining to exclusions and[~~including specific inclusions and exclusions,~~] prohibitions;[,] requirements for general permits;[,] requirements for disposal into wells and into publicly-owned treatment works (POTW); and requirements for disposal by land application.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of federal regulations that are cited within this administrative regulation.

Section 2. Applicability of the KPDES Requirements. (1) The KPDES program shall require a permit to discharge pollutants from a point source into waters of the Commonwealth.

(2) Compliance with the KPDES program requirements shall constitute compliance with the operational permit requirements of 401 KAR 5:005.

(3) Failure to obtain a KPDES permit shall not relieve a discharger subject to the KPDES program from complying with the applicable performance standards of the KPDES program, 401 KAR 5:050 through 5:080.

Section 3. Point Source Categories Requiring a KPDES Permit. (1) The following categories of point sources shall require a KPDES permit to discharge:

(a) A point source discharge identified in 40 C.F.R. 122;

(b) A concentrated animal feeding operation;

(c) A concentrated aquatic animal production facility;

(d) A discharge into aquaculture projects;

(e) A discharge from separate storm sewers; and

(f) A silviculture point source.

(2) A facility covered by a general permit issued pursuant to Section 8 of this administrative regulation, may be required to obtain an individual permit based on contributions to water pollution.

(3) If an individual permit is required pursuant to this section, except as provided in subsection (4) of this section, the cabinet shall notify the discharger of that decision and the reasons for it.

(a) The discharger shall apply for a permit pursuant to 401 KAR 5:060 within sixty (60) days of notice, unless an extension is requested by the applicant.

(b) The question whether the designation was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

(4)(a) Prior to a determination that an individual permit shall be required for a storm water discharge, the cabinet may require the discharger to submit a permit application or information regarding the nature of the discharge as established in 40 C.F.R. 122.21(e), if:

1. The provisions of the general permit are not sufficient to protect human health and the environment; or

2. The discharger has a history of non-compliance with the provisions of the general permit.

(b) If an individual permit is required pursuant to this section, the cabinet shall notify the discharger of that decision and the reasons for it.

(c) The discharger shall apply for a KPDES permit within sixty (60) days of notice, unless an extension is requested by the applicant.

(d) The question whether the initial determination was proper shall remain open for consideration during the public comment period pursuant to 401 KAR 5:075 and in a subsequent hearing pursuant to KRS 224.10-420(2).

Section 4. Exclusions. An exclusion from the requirement to obtain a KPDES permit shall be:

(1) A discharge identified in 40 C.F.R. 122.3 or KRS 224.16-050(6);

(2) An authorization by permit or by rule that is prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f-300j, and that are issued under a state or federal Underground Injection Control program; and

(3) An underground injection control well that is permitted pursuant to 40 C.F.R. 144 if those permits are protective of public health and welfare and prevent the pollution of ground and surface waters.

Section 5. Prohibitions. The cabinet shall not issue a KPDES permit if:

(1) The conditions of the permit violate the provisions of KRS 224;

(2) The regional administrator has objected to issuance of the permit in writing pursuant to the procedures specified in 40 C.F.R. 123.44;

(3) The conditions of the permit do not comply with the water quality standards established in 401 KAR 10:031, interstate agencies, and all affected states; or

(4) If a prohibition is established in 40 C.F.R. 122.4.

Section 6. Variance Requests from Technology-based Effluent Limitations.

(1) A nonPOTW may request a variance from otherwise applicable effluent limitations as established in 40 C.F.R. 122.21(m), July 1, 2008.

(2) A nonPOTW may request an expedited variance as established in 40 C.F.R. 122.21(o), effective July 1, 2008.

Section 7. Effect of a Permit. The effect of a KPDES permit shall be as established in 40 C.F.R. 122.5.

Section 8. A General permit shall be issued as established in 40 C.F.R. 122.28.

Section 9. Disposal of Pollutants into Underground Injection Control Wells, into Publicly Owned Treatment Works, or by Land Application.

(1) An adjustment of effluent limitations related to disposal of pollutants into wells, into publicly owned treatment works, or by land application shall be as established in 40 C.F.R. 122.50.

(2) The cabinet may issue permits to control the disposal of pollutants into wells if necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.

Section 10. Variances from Technology-Based Treatment Requirements Available to KPDES Applicants. Consistent with KRS 224.16-050, the variance provisions in this section and in 401 KAR 5:080, Sections 3 and 4, establish those variances from technology-based requirements available to KPDES applicants.

(1) Economic capability. The cabinet, with the concurrence of U.S. EPA, may modify BAT requirements for a point source if the owner or operator demonstrates that the variance satisfies the requirements of 33 U.S.C. 1311(c).

(2) Environmental considerations. The cabinet, with the concurrence of U.S. EPA, may modify the BAT requirement for a point source that does not discharge toxic pollutants identified in 40 C.F.R. 401.15, conventional pollutants, or the thermal component of that discharge, if the owner or operator demonstrates that the modification is consistent with the conditions established in 33 U.S.C. 1311(g).

(3) Innovative technology. The cabinet shall establish a date for complying with the deadline for achieving BAT not later than two (2) years after the date for compliance with the effluent limitation would otherwise be applicable, if the innovative technology is as established in 33 U.S.C. 1311(k).

(4) Thermal pollution. An alternative effluent limitation for the thermal component of a discharge shall be as established in 33 U.S.C. 1326(a).

Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations.

(1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the cabinet has delegated authority to implement the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(3) "KPDES" shall be substituted for "NPDES" if the cabinet has been delegated authority to implement federal regulations cited in Sections 1 through 10 of this administrative regulation.

(4) "Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget" shall be substituted for "Standard metropolitan statistical areas as defined by the Office of Management and Budget" in 40 C.F.R. 122.28 (a)(1)(vi).

(5) "Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census" shall be substituted for "Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202, effective May 1, 1974" in 40 C.F.R. 122.28 (a)(1)(vi).[Applicability of the KPDES Requirements. The KPDES program shall require a permit to discharge pollutants from a point source into waters of the Commonwealth. Compliance with the KPDES program requirements shall constitute compliance with the operational permit requirements of 401 KAR 5:005 and requirements related to the operational permit. Failure to obtain a KPDES permit shall not relieve a discharger subject to the KPDES program from complying with the applicable performance standards of that program, 401 KAR 5:050 to 5:080, inclusive.

(1) Specific inclusions. The following examples are specific categories of point sources that require a KPDES permit to discharge. These terms are further defined in 401 KAR 5:002.

(a) Concentrated animal feeding operations;

(b) Concentrated aquatic animal production facilities;

(c) Discharges into aquaculture projects;

(d) Discharges from separate storm sewers;

(e) Silviculture point sources, and

(f) Permits required on a case-by-case basis.

1. Various sections of 401 KAR 5:060 allow the cabinet to determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, storm water discharges, and other facilities covered by a general permit, may be required to obtain an individual permit because of their contributions to water pollution.

2. If the cabinet decides that an individual permit is required under this section, except as provided in subparagraph 3 of this paragraph, the cabinet shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger shall apply for a permit under 401 KAR 5:060 within sixty (60) days of notice, unless permission for a later date is granted by the cabinet. The question whether the designation was proper shall remain open for consideration during the public comment period under 401 KAR 5:075 and in any subsequent hearing.

3. Prior to a case-by-case determination that an individual permit is required for a storm water discharge under 401 KAR 5:060, Section 12, the cabinet may require the discharger to submit a permit application or other information regarding the discharge under 401 KAR 5:060, Section 1(6). In requiring the information, the cabinet shall notify the discharger in writing and shall send an application form with the notice. The discharger shall apply for a permit under 401 KAR 5:060, Section 12, within sixty (60) days of notice, unless permission for a later date is granted by the cabinet. The question whether the initial designation was proper shall remain open for consideration during the public comment period under 401 KAR 5:075 and in any subsequent hearing pursuant to KRS 224.10-420(2).

(2) Specific exclusions. The following discharges shall not require KPDES permits:

(a) Discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or other discharge incidental to the normal operation of a vessel. This exclusion shall not apply to rubbish, trash, garbage, or other materials discharged overboard; nor to other discharges if the vessel is operating in a capacity other than as a means of transportation such as if used as an energy or mining facility, a storage facility or a seafood processing facility, or if secured to a storage facility or a seafood processing facility, or if secured in waters of the Commonwealth for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the Commonwealth which are regulated under CWA Section 404 (33 U.S.C. Section 1344).

(c) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect discharges. Plans or agreements to switch to this method of disposal in the future shall not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the Commonwealth are eliminated.

(d) Discharges in compliance with the instructions of an on-scene coordinator pursuant to 40 C.F.R. Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 C.F.R. Part 153 (Pollution by Oil and Hazardous Substances), discharges in compliance with the state hazardous substance contingency plan issued pursuant to KRS 224.01-400, or discharges authorized by state on-scene coordinators in response to releases of hazardous substances, pollutants and contaminants or petroleum.

(e) Introduction of pollutants from nonpoint source agricultural and silvicultural activities, including storm water run-off from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges form concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the cabinet may otherwise require under 401 KAR 5:065, Section 2(12).

(h) Authorizations by permit or by rule which are prepared to assure that underground injection will not endanger drinking water supplies, pursuant to the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), and which are issued under a state or federal Underground Injection Control program; and, underground injections and disposal wells which are permitted by the cabinet pursuant to 401 KAR Chapter 5.

(i) Discharges which are not regulated by the U.S. EPA under CWA Section 402, 33 U.S.C. Section 1342.

Section 2. Prohibitions. No permit shall be issued by the cabinet:

(1) If the conditions of the permit do not provide for compliance with the applicable requirements of KRS Chapter 224, or administrative regulations promulgated pursuant thereto;

(2) If the regional administrator has objected to issuance of the permit in writing under the procedures specified in 40 C.F.R. Section 123.44;

(3) If the imposition of conditions cannot ensure compliance with the applicable water quality requirements of Kentucky and all affected states;

(4) If, in the judgment of the secretary of the U.S. Army, acting through the Chief of Engineers, anchorage and navigation in or on waters of the United States would be substantially impaired by the discharge;

(5) For the discharge of radiological, chemical, or biological warfare agent or high level radioactive waste;

(6) For the discharge inconsistent with a water quality management plan or plan amendment approved by EPA, or

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet Kentucky water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the KPDES administrative regulations and for which the cabinet has performed a pollutant load allocation for the pollutants to be discharged, shall demonstrate, before the close of the public comment period, that:

(a) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(b) The existing dischargers into that segment are subject to schedules of compliance designed to bring the segment into compliance with Kentucky water quality standards. The cabinet may waive the submission of information by the new source or new

~~discharger required by this subsection if the cabinet determines that the cabinet already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph shall be included in the fact sheet to the permit under 401 KAR 5:075, Section 4.~~

~~Section 3. Variance Requests by Non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under the following statutory or regulatory provisions within the times specified in this section:~~

~~(1) Fundamentally different factors. A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:~~

~~(a) For a request from best practicable control technology currently available (BPT), by the close of the public comment period under 401 KAR 5:075.~~

~~(b) For a request from best available technology economically achievable (BAT) or best conventional pollutant control technology (BCT), by no later than:~~

~~1. July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated administrative regulations, or~~

~~2. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987. The request shall explain how the requirements of 401 KAR 5:080, Section 3, have been met.~~

~~(2) Nonconventional pollutants. A request for a variance from the BAT requirements for "nonconventional" pollutants, pursuant to Section 7(1) of this administrative regulation because of the economic capability of the owner or operator, or pursuant to Section 7(2) of this administrative regulation because of certain environmental considerations, shall be made as follows. A nonconventional pollutant variance shall be available only for ammonia, chlorine; color; iron; total phenols (4AAP), as determined by the U.S. EPA to be a pollutant covered by CWA, Section 301(b)(2)(F), 33 U.S.C. 1311(b)(2)(F); and any other pollutant which the U.S. EPA lists under CWA Section 301(g)(4), 33 U.S.C. 1311(g)(4).~~

~~(a) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:~~

~~1. Submitting an initial request to the cabinet stating the name of the discharger, the permit number, the outfall number, the applicable effluent guideline, and whether the discharger is requesting a modification under Section 7(1) or (2) of this administrative regulation or both Section 7(1) and (2) of this administrative regulation. This request shall have been filed not later than:~~

~~a. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or~~

~~b. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 17, 1977, and~~

~~2. Submitting a completed request no later than the close of the public comment period under 401 KAR 5:075, Section 5 demonstrating that the requirements of 401 KAR 5:075, Section 8 and the applicable requirements of 401 KAR 5:080 have been met. Notwithstanding this provision, the complete application for a request under Section 7(2) of this administrative regulation shall be filed 180 days before a decision is desired.~~

~~(b) For those requests for a variance from effluent limitation guidelines, the request need only comply with paragraph (a)2 of this subsection and need not be preceded by an initial request under paragraph (a)1 of this subsection.~~

~~(3) Delay in construction of POTW. An extension under CWA Section 301(i)(2), 33 U.S.C. 1311(i)(2) of the statutory deadlines in Section 301(b)(1)(A) or (b)(1)(C) of the CWA, 33 U.S.C. 1311(b)(1)(A) or (C) based on delay in completion of a POTW into which the source is to discharge shall have been requested on or before June 26, 1978 or 180 days after the relevant POTW requested an extension under 40 C.F.R. 122.21(n)(2) whichever is later, but not later than January 30, 1988.~~

~~(4) Innovative technology. An extension under Section 7(3) of this administrative regulation from the deadline in 401 KAR 5:080, Section 1, for best available technology (BAT) or for best conventional pollutant control technology (BCT), based on the use of innovative technology, shall be requested no later than the close of the public comment period under 401 KAR 5:075, Section 5, for the discharger's initial permit requiring compliance with applicable effluent limitations. The request shall demonstrate that the requirements of 401 KAR 5:080 have been met.~~

~~(5) Thermal discharges. A variance under Section 7(4) of this administrative regulation for the thermal component of a discharge shall be filed with a timely application for a permit under 401 KAR 5:060, except that if thermal effluent limitations are established by EPA or are based on Kentucky water quality standards the request for a variance shall be filed by the close of the public comment period under 401 KAR 5:075, Section 5.~~

~~Section 4. Expedited Variance Procedures and Time Extensions. Notwithstanding the time requirements in Section 3 of this administrative regulation, the cabinet may notify a permit applicant before a draft permit is issued under 401 KAR 5:075, Section 3, that the draft permit will likely contain limitations which are eligible for variances.~~

~~(1) In the notice the cabinet may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 401 KAR 5:080 applicable to the variance have been met. The cabinet may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which shall become effective upon final grant of the variance.~~

~~(2) A discharger who cannot file a complete request required under Section 3(2) of this administrative regulation may request an extension. The extension may be granted or denied by the cabinet. Extensions shall not be more than six (6) months in duration.~~

~~Section 5. General Permits. (1) Coverage. The cabinet shall issue a general permit in accordance with the following:~~

~~(a) Area. The general permit shall be written to cover one (1) or more categories or subcategories of discharges described in the permit under paragraph (b) of this subsection, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:~~

~~1. Designated planning areas under CWA Sections 208 and 303, 33 U.S.C. Sections 1288 and 1313;~~

~~2. City, county, or state political boundaries;~~

~~3. State highway systems;~~

~~4. Standard metropolitan statistical areas as defined by the University of Louisville Urban Studies Center, consistent with the U.S. Office of Management and Budget;~~

~~5. Urbanized areas as designated by the University of Louisville Urban Studies Center consistent with the U.S. Bureau of the Census; or~~

~~6. Other appropriate division or combination of boundaries.~~

~~(b) Sources. The general permit shall be written to regulate, within the area described in paragraph (a) of this subsection, either:~~

~~1. Storm water point sources; or~~

~~2. One (1) or more categories or subcategories of point sources other than storm water point sources, or one (1) or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory all:~~

~~a. Involve the same or substantially similar types of operations;~~

~~b. Discharge the same types of wastes;~~

~~c. Require the same effluent limitations or operating conditions;~~

~~d. Require the same or similar monitoring; and~~

~~e. In the opinion of the cabinet, are more appropriately controlled under a general permit than under individual permits.~~

~~(c) Water quality based limits. If sources within a specific category or subcategory of dischargers are subject to water quality based limits imposed pursuant to 401 KAR 5:065, Section 2(4), the~~

~~sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.~~

~~(d) Other requirements.~~

~~1. The general permit shall clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.~~

~~2. The general permit may exclude specified sources or areas from coverage.~~

~~(2) Administration.~~

~~(a) General permits shall be issued, modified, revoked and reissued, or revoked in accordance with applicable requirements of 401 KAR 5:075.~~

~~(b) Requiring an individual permit.~~

~~1. The cabinet may require any person authorized to discharge by a general permit to apply for and obtain an individual KPDES permit. Interested person may petition the cabinet to take action under this paragraph. An individual KPDES permit may be required if:~~

~~a. The discharger is not in compliance with the conditions of the general KPDES permit;~~

~~b. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;~~

~~c. Effluent limitation guidelines are promulgated for point sources covered by the general KPDES permit;~~

~~d. A Kentucky Water Quality Management Plan containing requirements applicable to these point sources is approved; or~~

~~e. The requirements of subsection (1) of this section are not met.~~

~~2. An owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 401 KAR 5:060, Section 1, to the cabinet with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the cabinet in accordance with 401 KAR 5:075, Section 5. The request shall be processed under 401 KAR 5:075. If the reasons cited by the owner or operator are adequate to support the request, the cabinet may issue an individual permit.~~

~~3. If an individual KPDES permit is issued to an owner or operator otherwise subject to a general KPDES permit, the applicability of the general permit to the individual KPDES permittee is automatically revoked on the effective date of the individual permit.~~

~~4. A permittee, excluded from a general permit solely because the permittee already has an individual permit, may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.~~

~~Section 6. Disposal of Pollutants into Wells, Into POTWs or by Land Application. (1) The cabinet may issue permits to control the disposal of pollutants into wells, if necessary to protect the public health and welfare and to prevent the pollution of ground and surface waters.~~

~~(2) If part of a discharger's process wastewater is not being discharged into waters of the Commonwealth because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the Commonwealth, applicable effluent standards and limitations for the discharge in a KPDES permit shall be adjusted to reflect the reduced raw waste resulting from this disposal. Effluent limitations and standards in the permit shall be calculated by one (1) of the following methods:~~

~~(a) If none of the waste from a particular process is discharged into waters of the Commonwealth, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.~~

~~(b) In all cases other than those described in paragraph (a) of this subsection, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater now to be treated and discharged into waters of the Commonwealth, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 401 KAR 5:080, Section 3, to make them more stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method shall be algebraically expressed as:~~

~~$P = E \times N/T$~~

~~When P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the Commonwealth and T is the total wastewater flow.~~

~~(3) Subsection (2) of this section shall not apply to the extent that promulgated effluent limitations guidelines:~~

~~(a) Control concentrations of pollutants discharged but not mass; or~~

~~(b) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.~~

~~(4) Subsection (2) of this section does not alter a discharger's obligation to meet more stringent requirements established under 401 KAR 5:065.~~

~~Section 7. Variances Available to KPDES Applicants. Consistent with KRS 224.16-050, the variance provisions in this section and in 401 KAR 5:080, Sections 3 and 4, lists, inclusively, those variances available to KPDES applicants.~~

~~(1) Economic capability. The cabinet, with the concurrence of EPA, may modify the BAT requirements set out in 401 KAR 5:080, Section 1, for a point source, upon a showing by the owner or operator of that point source, satisfactory to the cabinet that the modified requirement will:~~

~~(a) Represent the maximum use of technology within the economic capability of the owner or operator; and~~

~~(b) Result in reasonable further progress toward the elimination of the discharge of pollutants.~~

~~(2) Environmental considerations.~~

~~(a) The cabinet, with the concurrence of EPA, may modify the BAT requirement set out in 401 KAR 5:080, Section 1, for a point source which does not discharge toxic pollutants identified in 401 KAR 5:080, Section 6, conventional pollutants, or the thermal component of that discharge upon a showing by the owner or operator satisfactory to the cabinet that:~~

~~1. The modified requirement shall result, at a minimum, in compliance with the BPT requirement identified in 401 KAR 5:080 or Kentucky water quality standards, whichever is applicable;~~

~~2. The modified requirement shall not result in any additional requirement on any other point or nonpoint source; and~~

~~3. The modification shall not:~~

~~a. Interfere with the attainment or maintenance of that water quality which will assure protection of public water supplies, protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water; and~~

~~b. Result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, including carcinogenicity, mutagenicity or teratogenicity, or synergistic propensities.~~

~~(b) If an owner or operator of a point source applies for a modification under this section for a pollutant, that owner or operator shall be eligible to apply for a modification under subsection (1) of this section with respect to that pollutant only during the same time period as he is eligible to apply for a modification under this section.~~

~~(3) Innovative technology.~~

~~(a) The cabinet shall establish a date for complying with the deadline for achieving BAT set out in 401 KAR 5:080, Section 1, no later than two (2) years after the date for compliance with the effluent limitation which would otherwise be applicable, if the owner or operator establishes to the satisfaction of the cabinet the following:~~

~~1. That the existing production capacity of the facility will be replaced with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to that facility, and which moves~~

~~toward the state's goal of eliminating the discharge of all pollutants; or~~

~~2. That an innovative control technique will be installed which has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation, and which moves toward the state's goal of eliminating the discharge of all pollutants; or~~

~~3. That an innovative system will be installed which has the potential for significantly lower costs than the system which has been determined by the cabinet to be economically achievable.~~

~~(b) The innovative system shall have the potential for industry-wide application.~~

~~(c) The cabinet shall not modify any requirement under this section which applies to a pollutant on the toxic pollutant list set out at 401 KAR 5:080, Section 6.~~

~~(d) The cabinet may include any of the following conditions in the permit of a discharger to which a compliance extension beyond the otherwise applicable compliance date is granted:~~

~~1. A requirement that the discharger report annually on the installation, operation, and maintenance costs of the innovative technology; or~~

~~2. Alternative BAT limitations that the discharger shall meet as soon as possible and not later than two (2) years after the date for compliance with the effluent limitation which would otherwise be applicable if the innovative technology limitations that are more stringent than BAT are not achievable.~~

~~(4) Thermal pollution.~~

~~(a) The cabinet may impose an alternative effluent limitation for the thermal component of a discharge from a point source if the owner or operator can establish to the satisfaction of the cabinet that the original effluent limitation proposed by the cabinet is more stringent than necessary to assure the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge will be made.~~

~~(b) The alternative effluent limitation imposed by the cabinet upon request by the owner or operator shall take into account the interaction of the thermal component with other pollutants, and shall assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on that body of water.~~

~~Section 8. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are available for inspection and copying, during normal business hours of 8 a.m. to 4:30 p.m., eastern time, excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.~~

~~(1) 33 C.F.R. Part 153, "Pollution by Oil and Hazardous Substances," as in effect on July 1, 2001 for the description of emergency discharges exempt from KPDES permit requirements;~~

~~(2) 40 C.F.R. 122.21(n)(2), "Permit compliance extensions allowed for delays in construction of POTW," as in effect on July 1, 2001 for permit extensions as referenced in Section 3(3) of this administrative regulation; and~~

~~(3) 40 C.F.R. Part 300, "The National Oil and Hazardous Substances Pollution Contingency Plan," as in effect on July 1, 2001 for the description of emergency dischargers exempt from KPDES permit requirements.]~~

HENRY C.A. LIST, Deputy Secretary for
LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 14, 2009 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2009 at 10:00 a.m. at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2009, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 June 1, 2009. 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: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter T. Goodmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the scope and applicability of the KPDES program including specific inclusions and exclusions, prohibitions, requirements for general permits, requirements for disposal into wells and into publicly-owned treat works (POTW) and disposal by land application.

(b) The necessity of this administrative regulation: KRS 224.16-050 (1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a). Further, KRS 224.15-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement or other condition that is more stringent than the effluent limitation, monitoring requirement or other condition that would have been applicable under the federal regulation if the permit were issued by the federal government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to require for persons discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224.16-050(1) provides that the cabinet may issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific bounds for the scope of the KPDES 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 will clarify that the cabinet must develop permit limitations to satisfy standards developed by interstate agencies. This amendment also revises ambiguous terms in accordance with KRS 13A and provides federal citations and strikes the federal language reproduced in the body of the state administrative regulation.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to clarify a debate of the legal requirement of including limitations developed by an interstate agency. This amendment makes it clear that such limitations are required.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-050, which authorizes the cabinet to implement the Federal Water Pollution Control Act. This amendment also conforms to KRS 224.18-100, which authorizes interstate environmental compacts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies that the cabinet has authority to impose permit requirement developed pursuant to an interstate agency standard. The amendment will aid in carrying out the goals of KRS Chapter 224. The cabinet also believes that citing federal regulations will allow future federal changes in regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This

regulation affects over 10,000 existing permitted entities including individuals, businesses and governmental organizations. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

a. Individuals: 100 per year for new permit issuances under the individual family residence permit. Renewal of these permits would average 300 per year. However, renewals of general permits occur as a batch once every five years.

b. Businesses: 1600 per year, primarily through industrial permits, non-public entity sanitary wastewater permits, and stormwater coverage issuances.

c. Organizations: 100 per year, primarily through individual sanitary permits issued to non-public organizations such as churches, summer camps, and private social or sporting clubs.

d. State or Local Government: 30 per year, primarily through permits for Public-Owned Treatment Works (POTWs).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will have to comply with permit conditions and limitations that are pursuant to the standards of interstate agencies. This change should cause very little additional impact. The cabinet's requirements are typically as stringent as those of the existing interstate agency (ORSANCO).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

None of the entities identified in question (3) should have an increased cost due to this amendment

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will not be confused by potential authority gaps arising between state and federal regulations as applied in interstate waters.

(5)Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation?

Existing permit fees, General Funds, and EPA Funds. There is no change in source of funding because of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are expected to support this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly affect fees.

(9) TIERING: Is tiering applied? This administrative regulation provides tiered requirements through the identification of classes of industrial users, specific requirements of POTWs, and requirements for specific categories of dischargers. Program requirements and limitations depend upon the size and the specific category of the user.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This regulation affects all units of state or local government that have a KPDES discharge permit. The proposed amendment affects only those who discharge into waters bordering other states.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Clean Water Act and KRS 224

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to generate additional state or local government revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not expected to generate additional state or local government revenue.

(c) How much will it cost to administer this program for the first year? There will be no change in cost.

(d) How much will it cost to administer this program for subsequent years? There will be no change in cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

40 C.F.R. 122 and U.S.C. 1251-1387.

2. State compliance standards. KRS 224.16-050.

3 Minimum or uniform standards contained in the federal mandate. The federal standard requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U.S.C. 1251-1387)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, the amendment to this regulation will not apply stricter standards than those required by the federal mandate. However, the existing language of the regulation applies to "Waters of the Commonwealth", which has a slightly different definition than "Waters of the United States." The Kentucky definition for "Waters of the Commonwealth", established in KRS 224.01-010(33) includes ground water, but the definition for "Waters of the United States" does not include ground water.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment to this regulation will not apply stricter standards than those required by the federal mandate. However, the existing language of the regulation applies to "Waters of the Commonwealth", which has a slightly different definition than "Waters of the United States." The Kentucky definition for "Waters of the Commonwealth", established in KRS 224 01-010(33) includes ground water, but the definition for "Waters of the United States" does not include ground water.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 5:060. KPDES application requirements.

RELATES TO: KRS 224.01-010,[~~224.01-070,~~] 224.01-400, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R.[~~35 2005(b)(20),~~] 110.6, 117.21, 122, 123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471[~~et seq.~~], 33 U.S.C. 1251-1387[~~et seq., 1314, 1315(b), 1324(a), 1329(a), 1344, 1401 et seq.~~], 42 U.S.C. 300h[~~et seq.~~], 6901-7000[~~et seq., 6924(u), 6928(h), 7412, 7470-7492, 7501-7515~~], 11023, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224 10-100, 224.16-050, 224 70-110, 40 C.F.R. [~~35 2005(b)(20),~~] 110.6, 117.21, 122,

123.35, 136, 261, 262.34, 302.6, 355, Chapter I, Subchapter N, Parts 401-471[~~et seq.~~], 33 U.S.C. 1251-1387[~~et seq., 1314, 1315(b), 1324(a), 1329(a), 1344, 1401 et seq.~~], 42 U.S.C. 300h[~~et seq.~~], 6901-7000[~~et seq., 6924(u), 6928(h), 7412, 7470-7492, 7501-7515~~], 11023

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the[~~Environmental and Public Protection~~] cabinet to issue, continue in effect, revoke, modify, suspend, or deny[~~under such conditions as the cabinet may prescribe,~~] permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes[~~further empowers~~] the cabinet to issue federal permits pursuant to 33 U.S.C.[~~Section~~] 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C [~~Section~~] 1251-1387[~~et seq.~~] subject to the conditions established[~~imposed~~] in 33 U.S.C.[~~Sections~~] 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes[~~sets forth~~] the application requirements for a KPDES permit[~~all KPDES permits~~] and contains additional requirements for general and specific categories of dischargers.

Section 1. Definitions. Definitions established in 40 C.F.R. 122.2 shall apply for the interpretation of the federal regulations cited within this administrative regulation.

Section 2. Applying for a KPDES Permit. (1) Application requirements. A person who is required to have a permit, including a new applicant or permittee with an expiring permit, shall complete, sign, and submit an application to the cabinet as established in this administrative regulation and 401 KAR 5:055.

(2) Duty to apply.

(a)1. A person who discharges or proposes to discharge pollutants and who does not have an effective permit shall submit a complete application to the cabinet in accordance with this section, unless excluded in clause a. through c. of this subparagraph.

a. A person covered pursuant to general permits as established in 40 C.F.R. 122.28.

b. A person discharging to a POTW as established in 40 C.F.R. 122.3 unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44 (m).

c. A user of a privately owned treatment works, unless the cabinet requires an individual permit pursuant to 40 C.F.R. 122.44(m).

2. The application shall include a BMP program if necessary pursuant to 40 C.F.R. 122.44 (k).

(b) An applicant shall submit the appropriate application form, as established in Table 1 of this paragraph.

TABLE 1

Discharge Type	Required Application Form
POTW	1 and A
CAFO	1 and B
Aquatic Animal Production Facility	1 and B
Manufacturing, commercial, mining and silvicultural discharges with process water	1 and C
Manufacturing, commercial, mining and silvicultural discharges with nonprocess wastewater only	1 and SC
Industrial stormwater point source discharges	1 and F

(3) Additional requirements for KPDES applications shall be as established in 40 C.F.R. 122.21 and the modifications, exceptions, and additions of Section 11 of this administrative regulation.

(4) Continuation of expiring permits shall be as established in 40 C.F.R. 122.6.

(5) An animal feeding operation may submit Form NDCAFO to satisfy the voluntary certification of no-discharge pursuant to 40 C.F.R. 122.23(i).

Section 3. Service of Process. (1) Each applicant and permittee shall provide the cabinet with an address for receipt of any legal document for service of process.

(2) The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet shall tender any legal notice.

Section 4. Signatories to Permit Applications and Reports. Signatories to permit applications and reports shall be as established in 40 C.F.R. 122.22.

Section 5. Concentrated Animal Feeding Operations. (1) Additional permit application and special KPDES program requirements shall be as established in 40 C.F.R. 122.23.

(2) The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit if a CAFO obtains coverage under a general permit in accordance with 40 C.F.R. 122.23 (h) and 40 C.F.R. 122.28 is not a cause for modification pursuant to the requirements of 401 KAR 5:070, Section 6, or 40 C.F.R. 122.62.

(3) The incorporation of changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements established in 40 C.F.R. 122.42(e)(6) shall be a minor modification as established in 40 C.F.R. 122.63.

Section 6. Concentrated Aquatic Animal Production Facilities. A concentrated aquatic animal production facility shall be a point source subject to the KPDES permit program and shall be subject to permit application and special KPDES program requirements established in 40 C.F.R. 122.24.

Section 7. Concentrated Aquatic Animal Projects. A discharge into an aquatic animal project shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.25.

Section 8. Storm Water Discharges. A point source discharge of storm water shall be subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.26.

Section 9. Silvicultural Activities. A silvicultural point source shall be a point source subject to the KPDES permit program and the requirements established in 40 C.F.R. 122.27.

Section 10. Regulated Small MS4. (1) The objective of regulating a small MS4 shall be as established in 40 C.F.R. 122.30.

(2) The operator of a small MS4 shall be subject to regulation as established in 40 C.F.R. 122.32.

(3) The application requirements for a small MS4 shall be as established in 40 C.F.R. 122.33.

(4) The permit for a small MS4 shall contain the conditions established in 40 C.F.R. 122.34.

(5) A small MS4 may share responsibilities to implement minimum control measures as established in 40 C.F.R. 122.35.

Section 11. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(2) "Cabinet" shall be substituted for "Director" if the cabinet has delegated authority to implement federal regulations cited in Sections 1 through 10 of this administrative regulation.

(3) "KPDES" shall be substituted for "NPDES" if the cabinet has delegated authority to implement federal regulations cited in Sections 1 through 10 of this administrative regulation.

(4) The forms required in Section 1(a) of this administrative regulation shall be substituted for the federal forms established in 40 C.F.R. 122.21.

(5)(a) "Fecal coliform" shall be modified to "e-coli" in the federal regulations cited in Sections 1 through 10 of this administrative regulation.

(b) E-coli shall be measured by grab sample.

(6) The conditions for Cooling Water Phase II established in 40

C F R 122 21(r)(1)(ii) shall be modified to remove the references to 40 C F.R. 125.95.

(7) The special procedures related to thermal variances cited as 40 C.F.R. Section 124.65 in 40 C F.R. 122 21(m)(6) shall be modified to 40 C F.R 124 62

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KPDES Form 1, DEP 7032, February 2009;

(b) KPDES Form A, DEP 7032A, February 2009;

(c) KPDES Form B, DEP 7032B, February 2009;

(d) KPDES Form C, DEP 7032C, February 2009;

(e) KPDES Form SC, DEP 7032SC, February 2009;

(f) KPDES Form F, DEP 7032F, February 2009;

(g) KPDES Form NE, DEP 7032NE, February 2009; and

(h) KPDES Form NCAFO, DEP 7032NDCAFO, February 2009.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Applying for a KPDES Permit. (1) Application requirements. Any person who is required to have a permit, including new applicants and permittees with expiring permits, shall complete, sign, and submit an application to the cabinet as described in this administrative regulation and 401 KAR 5:055. On the date of KPDES program approval by EPA, all persons permitted or authorized under NPDES shall be deemed to hold a KPDES permit, including those expired permits which EPA has continued in effect according to 40 C.F.R. Section 122.6, continuation of expiring permits. For the purpose of this section, the cabinet shall accept the information required under subsection (7) of this section, for existing facilities, which has been submitted to EPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current.

(2) Duty to apply.

(a) Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits under 401 KAR 5:055, Section 5, excluded under 401 KAR 5:055, Section 1(2), or a user of a privately owned treatment works unless the cabinet requires otherwise under 401 KAR 5:065, Section 2(12), shall submit a complete application, which shall include a BMP program if necessary under 401 KAR 5:065, Section 2(10) to the cabinet in accordance with this section.

(b) The appropriate application forms for the various discharger types are given below. The forms are incorporated by reference in Section 14 of this administrative regulation.

DISCHARGE TYPE	APPLICATION FORMS
POTWs	1 and A
Concentrated animal feeding operations and aquatic animal production facilities	1 and B
Manufacturing, commercial, mining and silvicultural discharges with process wastewater	1 and C
Manufacturing, commercial, mining and silvicultural discharges with non-process wastewater only	1 and Short C
Industrial storm water point source discharges	1 and F

(3) If a facility or activity is owned by one (1) person but is operated by another person, the operator shall obtain a permit.

(4) Time to apply. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the cabinet. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities with storm water runoff from construction activities as defined in 401 KAR 5:002, Section 1, shall submit applications at least ninety (90) days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the ninety (90) or 180 day requirements to avoid delay. See also Section 12(2)(a)1g and (2)(a)2 of this administrative regulation.

(5) Duty to reapply.

(a) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the cabinet. The cabinet shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(b) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that the cabinet may grant permission to submit an application later than the deadline for submission otherwise applicable, but the new deadline shall not be later than the permit expiration date.

(c) Continuation of expiring permits.

1. The conditions of an expired permit shall continue in force until the effective date of a new permit if:

a. The permittee has submitted a timely application under subsection (2) of this section which is a complete application for a new permit; and

b. The cabinet, through no fault of the permittee, does not issue a new permit with an effective date under 401 KAR 5:075, Section 11, on or before the expiration date of the previous permit.

2. Effect. Permits continued under this paragraph shall remain fully effective and enforceable until the effective date of a new permit.

3. Enforcement. If the permittee is not in compliance with the conditions of the expiring or expired permit the cabinet may do any of the following:

a. Initiate enforcement action based upon the permit which has been continued;

b. Issue a notice of intent to deny the new permit under 401 KAR 5:075, Section 3(2);

c. Issue a new permit under 401 KAR 5:075 with appropriate conditions; or

d. Take other actions authorized by KRS Chapter 224 and 401 KAR Chapter 5.

(6) Completeness. The cabinet shall not issue a permit before receiving a complete application for a permit except for KPDES general permits. An application for a permit shall be complete when the cabinet receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

(7) Information requirements. All applicants for KPDES permits shall provide the following information to the cabinet, using the application form provided by the cabinet. Additional information required of applicants is set forth in Sections 2 through 5 of this administrative regulation.

(a) The activities conducted by the applicant which require it to obtain a KPDES permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) Up to four (4) SIC codes which best reflect the principal products or services provided by the facility.

(d) The owner's or operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

(e) A listing of all existing environmental permits.

(f) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and these wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(g) A brief description of the nature of the business.

(8) KPDES permit fees. As provided for in KRS 224.70-120, KPDES applications shall include a filing fee of twenty (20) percent

~~of the total fee applicable to the following categories:~~

~~(a) Major industry;~~

~~(b) Minor industry;~~

~~(c) Nonprocess industry;~~

~~(d) Large, nonpublicly owned treatment works;~~

~~(e) Intermediate, nonpublicly owned treatment works;~~

~~(f) Small, nonpublicly owned treatment works;~~

~~(g) Agriculture, and~~

~~(h) Surface mining operation.~~

~~Section 2. Application Requirements for Manufacturing, Commercial, Mining, and Silvicultural Dischargers. Manufacturing, commercial, mining, and silvicultural dischargers applying for KPDES permits, except for those facilities subject to the requirements of Section 3 of this administrative regulation, shall provide the following information to the cabinet, using the appropriate application forms as specified in Section 1 of this administrative regulation.~~

~~(1) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds and the name of the receiving water.~~

~~(2) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subsection (3) of this section. The water balance shall provide approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.~~

~~(3) Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye making reactor or distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation shall be indicated.~~

~~(4) Intermittent flows. If any of the discharges described in subsection (3) of this section are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage or leaks.~~

~~(5) Maximum production. If an effluent guideline promulgated under Section 304 of CWA, 33 U.S.C. 1314 applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure shall reflect the actual production of the facility as required by 401 KAR 5:065, Section 3(2).~~

~~(6) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.~~

~~(7) Effluent characteristics. Information on the discharge of pollutants specified in this subsection, except information on storm water discharges which is to be provided as specified in Section 12 of this administrative regulation.~~

~~(a) If quantitative data for a pollutant are required, the applicant shall collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 C.F.R. Part 136. If no analytical method is approved the applicant may use any suitable method but shall provide a description of the method. If an applicant has two (2) or more outfalls with substantially identical effluents, the cabinet may allow the applicant to test only one (1) outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (f) and (g) of this subsection that an applicant shall provide quantitative data for certain pollutants known to be present shall not apply to pollutants present in a discharge solely as the result of their presence in intake water. An applicant shall report these pollutants as present. Grab samples shall be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, twenty-four (24) hour composite samples shall be used. A minimum of one (1) grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours. In addition, for discharges other than storm water discharges, the cabinet may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is not feasible and that the minimum of four (4) grab samples shall be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than one-tenth (0.1) inch and at least seventy-two (72) hours from the previously measurable (greater than one-tenth (0.1) inch rainfall) storm event. If feasible, the variance in the duration of the event and the total rainfall of the event should not exceed fifty (50) percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three (3) hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three (3) sample aliquots taken in each hour of discharge for the entire discharge or for the first three (3) hours of the discharge, with each aliquot being separated by a minimum period of fifteen (15) minutes. Applicants submitting permit applications for storm water discharges under Section 12(3) of this administrative regulation may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the cabinet. A minimum of one (1) grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours. For a flow-weighted composite sample, only one (1) analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data shall be reported for the grab sample taken during the first thirty (30) minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in Section 12(2)(a) of this administrative regulation. For all storm water permit applicants taking flow-weighted composites, quantitative data shall be reported for all pollutants specified in Section 12 of this administrative regulation except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The cabinet may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snowmelt or rainfall), protocols for collecting samples under 40 C.F.R. Part 136, and additional time for submitting data on a case-by-case basis. An applicant knows or has reason to know that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.~~

~~(b)1. Every applicant shall report quantitative data for every outfall for the following pollutants:~~

~~Biochemical oxygen demand (BOD)~~

~~Chemical oxygen demand~~

~~Total organic carbon~~

~~Total suspended solids~~

~~Ammonia, as N~~

~~Temperature both winter and summer~~

~~pH~~

~~2. The cabinet may waive the reporting requirements for individual point sources or for a particular industry category for one (1)~~

~~or more of the pollutants listed in subparagraph 1 of this paragraph if the applicant has demonstrated that a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.~~

~~(c) Each applicant with processes in one (1) or more of the following primary industry categories contributing to a discharge shall report quantitative data for the following pollutants in each outfall containing process wastewater:~~

~~1. Adhesives and sealants.~~
~~2. Aluminum forming.~~
~~3. Auto and other laundries.~~
~~4. Battery manufacturing.~~
~~5. Coal mining.~~
~~6. Coil coating.~~
~~7. Copper forming.~~
~~8. Electrical and electronic components.~~
~~9. Electroplating.~~
~~10. Explosives manufacturing.~~
~~11. Foundries.~~
~~12. Gum and wood chemicals.~~
~~13. Inorganic chemicals manufacturing.~~
~~14. Iron and steel manufacturing.~~
~~15. Leather tanning and finishing.~~
~~16. Mechanical products manufacturing.~~
~~17. Nonferrous metals manufacturing.~~
~~18. Ore mining.~~
~~19. Organic chemicals manufacturing.~~
~~20. Paint and ink formulation.~~
~~21. Pesticides.~~
~~22. Petroleum refining.~~
~~23. Pharmaceutical preparations.~~
~~24. Photographic equipment and supplies.~~
~~25. Plastics processing.~~
~~26. Plastic and synthetic materials manufacturing.~~
~~27. Porcelain enameling.~~
~~28. Printing and publishing.~~
~~29. Pulp and paper mills.~~
~~30. Rubber processing.~~
~~31. Soap and detergent manufacturing.~~
~~32. Steam electric power plants.~~
~~33. Textile mills.~~
~~34. Timber products processing.~~

~~(d) Analytical results for the organic toxic pollutants in the fractions designated in Section 8(1) of this administrative regulation for the applicant's industrial category or categories shall be provided unless the applicant qualifies as a small business under subsection (8) of this section. Section 8(2) of this administrative regulation lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography and mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing shall not be conclusive as to the applicant's inclusion in that category for any other purposes.~~

~~(e) Analytical results for the pollutants listed in Section 8(3) of this administrative regulation (the toxic metals, cyanide, and total phenols) shall be provided.~~

~~(f)1. Each applicant shall indicate whether it knows or has reason to know that any of the pollutants in Section 8(4) of this administrative regulation (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant shall report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant shall either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.~~

~~2. Each applicant shall indicate whether it knows or has reason to know that any of the pollutants listed in Section 8(2) or (3) of this administrative regulation (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (b) of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of ten (10) ppb or greater the applicant shall report quantitative data. For acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-4,6-dinitrophenol, if any of these four (4) pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant shall report quantitative data. For every pollutant expected to be discharged in concentrations less than ten (10) ppb, or in the case of acrolein, acrylonitrile, 2,4-dinitrophenol, and 2-methyl-4,6-dinitrophenol, in concentrations less than 100 ppb, the applicant shall either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subsection (8) of this section shall not be required to analyze for pollutants listed in Section 8(2) of this administrative regulation (the organic toxic pollutants).~~

~~(g) Each applicant shall indicate whether it knows or has reason to know that any of the pollutants in Section 8(5) of this administrative regulation (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.~~

~~(h) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:~~

~~1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy)-ethyl,-2,2-dichloropropionate (Erbon); O,O-dimethyl-O-(2,4,5-trichlorophenyl)-phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP), or~~

~~2. Knows or has reason to know that TCDD is or may be present in an effluent.~~

~~(8) Small business exemption. An applicant which qualifies as a small business under one (1) of the following criteria shall be exempt from the requirements in subsection (7)(b)1 or (c)1 of this section to submit quantitative data for the pollutants listed in Section 8(2) of this administrative regulation (the organic toxic pollutants):~~

~~(a) For coal mines, a probable total annual production of less than 100,000 tons per year.~~

~~(b) For all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars).~~

~~(9) Used or manufactured toxics. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct shall be provided. The cabinet may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the cabinet has adequate information to issue the permit.~~

~~(10) Biological toxicity tests. An identification of any biological toxicity tests which the applicant knows or has reason to know have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge shall be provided.~~

~~(11) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by subsection (7) of this section, the identity of each laboratory or firm and the analyses performed shall be provided.~~

~~(12) Additional information. In addition to the information reported on the application form, applicants shall provide to the cabinet, at its request, other information as the cabinet may reasonably require to assess the discharges of the facility and to determine whether to issue a KPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.~~

~~Section 3. Application Requirements for Manufacturing, Commercial, Mining and Silvicultural Facilities which Discharge Only Nonprocess Wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for KPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the cabinet, using application forms provided by the cabinet:~~

~~(1) Outfall location. Outfall number, latitude and longitude to~~

~~the nearest fifteen (15) seconds, and the name of the receiving water.~~

~~(2) Discharge date for new dischargers. Date of expected commencement of discharge.~~

~~(3) Type of waste. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives, if any, that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available.~~

~~(4) Effluent characteristics.~~

~~(a) The applicant shall provide quantitative data for the pollutants or parameters listed in subparagraphs 1 through 11 of this paragraph, unless testing is waived by the cabinet. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and shall include maximum daily value, average daily value, and number of measurements taken. The applicant shall collect and analyze samples in accordance with 40 C.F.R. Part 136. Grab samples shall be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, twenty-four (24) hour composite samples shall be used. New dischargers shall include estimates for the pollutants or parameters listed in subparagraphs 1 through 11 of this paragraph instead of actual sampling data, along with the source of each estimate. All levels shall be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.~~

~~1. Biochemical oxygen demand (BOD).~~

~~2. Total suspended solids (TSS).~~

~~3. Fecal coliform, if known to be present or if sanitary waste is or will be discharged.~~

~~4. Total residual chlorine, if chlorine is used.~~

~~5. Oil and grease.~~

~~6. Chemical oxygen demand (COD), if noncontact cooling water is or will be discharged.~~

~~7. Total organic carbon (TOC), if noncontact cooling water is or will be discharged.~~

~~8. Ammonia, as N.~~

~~9. Discharge Flow.~~

~~10. pH.~~

~~11. Temperature, winter and summer.~~

~~(b) The cabinet may waive the testing and reporting requirements for any of the pollutants or flow listed in paragraph (a) of this subsection if the applicant submits a request for a waiver before or with the application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.~~

~~(c) The requirements of paragraph (a) of this subsection that an applicant shall provide quantitative data or estimates of certain pollutants shall not apply to pollutants present in a discharge solely as a result of their presence in intake water. An applicant shall report these pollutants as present. Not credit may be provided for the presence of pollutants in intake water if the requirements of 401 KAR 5:065, Section 3(7) are met.~~

~~(5) Flow. A description of the frequency of flow and duration of any seasonal or intermittent discharge, except for storm water runoff, leaks, or spills.~~

~~(6) Treatment system. A brief description of any system used or to be used.~~

~~(7) Optional information. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 401 KAR 5:065, Section 3(7).~~

~~(8) Certification. Signature of certifying official under Section 9 of this administrative regulation.~~

~~Section 4. Application Requirements for Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities. Concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the cabinet, using the applicable application form provided by the cabinet:~~

~~(1) For concentrated animal feeding operations:~~

~~(a) The type and number of animals in open confinement and housed under roof.~~

~~(b) The number of acres used for confinement feeding.~~

~~(c) The design basis for the runoff diversion and control system, if one (1) exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.~~

~~(2) For concentrated aquatic animal production facilities:~~

~~(a) The maximum daily and average monthly flow from each outfall.~~

~~(b) The number of ponds, raceways, and similar structures.~~

~~(c) The name of the receiving water and the source of intake water.~~

~~(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.~~

~~(e) The calendar month of maximum feeding and the total mass of food fed during that month.~~

~~Section 5. Application Requirements for New and Existing POTWs. All POTWs shall provide, at a minimum, the information in this section to the cabinet, using KPDES Form A provided by the cabinet. Permit applicants shall submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the cabinet. The cabinet may waive any requirement of this paragraph if it has access to substantially identical information. The cabinet may also waive any requirement of this paragraph that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator shall include the cabinet's justification for the waiver. A regional administrator's disapproval of the cabinet's proposed waiver shall not constitute final agency action, except it shall provide notice to the cabinet and permit applicant(s) that EPA may object to any cabinet issued permit issued in the absence of the required information.~~

~~(1) Basic application information. All applicants shall provide the following information.~~

~~(a) Facility information. Name, mailing address, and location of the facility for which the application is submitted;~~

~~(b) Applicant information. Name, mailing address, and telephone number of the applicant, and an indication as to whether the applicant is the facility's owner, operator, or both;~~

~~(c) Existing environmental permits. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:~~

~~1. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C, 42 U.S.C. 6901 et seq.;~~

~~2. Underground Injection Control program under the Safe Drinking Water Act (SDWA), 42 U.S.C. 300(h) et seq.;~~

~~3. KPDES program pursuant to KRS Chapter 224;~~

~~4. Prevention of Significant Deterioration (PSD) program under the Clean Air Act, 42 U.S.C. 7470 to 7492;~~

~~5. Nonattainment program under the Clean Air Act, 42 U.S.C. 7501 to 7515;~~

~~6. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act, 42 U.S.C. 7412;~~

~~7. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 et seq.;~~

~~8. Dredge or fill permits under section 404 of the CWA, 33 U.S.C. 1344; and~~

~~9. Other relevant environmental permits;~~

~~(d) Population. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known, shall be indicated;~~

~~(e) Flow rate. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three (3) years;~~

~~(f) Collection system. Identification of types of collection systems used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and~~

~~(g) Outfalls and other discharge or disposal methods. The following information for outfalls to waters of the Commonwealth and other discharge or disposal methods:~~

~~1. For effluent discharges to waters of the Commonwealth, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);~~

~~2. For wastewater discharged to surface impoundments:~~

~~a. The location of each surface impoundment;~~

~~b. The average daily volume discharged to each surface impoundment, and~~

~~c. Whether the discharge is continuous or intermittent;~~

~~3. For wastewater applied to the land:~~

~~a. The location of each land application site;~~

~~b. The size of each land application site, in acres;~~

~~c. The average daily volume applied to each land application site, in gallons per day, and~~

~~d. Whether land application is continuous or intermittent;~~

~~4. For effluent sent to another facility for treatment prior to discharge:~~

~~a. The means by which the effluent is transported;~~

~~b. The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;~~

~~c. The name, mailing address, contact person, phone number, and KPDES permit number, if any, of the receiving facility; and~~

~~d. The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and~~

~~5. For wastewater disposed of in a manner not included in subparagraphs 1 through 4 of this paragraph (e.g., underground percolation, underground injection):~~

~~a. A description of the disposal method, including the location and size of each disposal site, if applicable;~~

~~b. The annual average daily volume disposed of by this method, in gallons per day; and~~

~~c. Whether disposal through this method is continuous or intermittent;~~

~~(2) Additional Information. All applicants with a design flow greater than or equal to one tenth (0.1) mgd shall provide the following information:~~

~~(a) Inflow and infiltration. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;~~

~~(b) Topographic map. A topographic map, or other map if a topographic map is unavailable, extending at least one (1) mile beyond property boundaries of the treatment plant, including all unit processes and showing:~~

~~1. Treatment plant area and unit processes;~~

~~2. The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Outfalls from bypass piping, if applicable, shall be included;~~

~~3. Each well where fluids from the treatment plant are injected underground;~~

~~4. Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within one quarter (1/4) mile of the property boundaries of the treatment plant;~~

~~5. Sewage sludge management facilities, including on site treatment, storage, and disposal sites; and~~

~~6. Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;~~

~~(c) Process flow diagram or schematic:~~

~~1. A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This shall include a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and~~

~~2. A narrative description of the diagram; and~~

~~(d) Scheduled improvements, schedules of implementation. The following information regarding scheduled improvements:~~

~~1. The outfall number of each outfall affected;~~

~~2. A narrative description of each required improvement;~~

~~3. Scheduled or actual dates of completion for the following:~~

~~a. Commencement of construction;~~

~~b. Completion of construction;~~

~~c. Commencement of discharge; and~~

~~d. Attainment of operational level;~~

~~4. A description of permits and clearances concerning other federal and state requirements;~~

~~(3) Information on effluent discharges. Each applicant shall provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:~~

~~(a) Description of outfall. The following information about each outfall:~~

~~1. Outfall number;~~

~~2. State, county, and city or town in which outfall is located;~~

~~3. Latitude and longitude, to the nearest second;~~

~~4. Distance from shore and depth below surface;~~

~~5. Daily flow rate, in million gallons per day;~~

~~6. The following information for each outfall with a seasonal or periodic discharge:~~

~~a. Number of times per year the discharge occurs;~~

~~b. Duration of each discharge;~~

~~c. Flow of each discharge;~~

~~d. Months in which discharge occurs; and~~

~~7. Whether the outfall is equipped with a diffuser and the type (e.g., high rate) of diffuser used;~~

~~(b) Description of receiving waters. The following information, if known, for each outfall through which effluent is discharged to waters of the Commonwealth:~~

~~1. Name of receiving water;~~

~~2. Name of watershed or river or stream system and the United States Soil Conservation Service fourteen (14) digit watershed code;~~

~~3. Name of the State Management River Basin and United States Geological Survey eight (8) digit hydrologic cataloging unit code; and~~

~~4. Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable);~~

~~(c) Description of treatment. The following information describing the treatment provided for discharges from each outfall to waters of the Commonwealth:~~

~~1. The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:~~

~~a. Design biochemical oxygen demand (BOD5 or CBOD5) removal percent;~~

~~b. Design suspended solids (SS) removal percent, and, if applicable,~~

~~c. Design phosphorus (P) removal percent;~~

~~d. Design nitrogen (N) removal percent, and~~

~~e. Any other removals that an advanced treatment system is designed to achieve.~~

~~2. A description of the type of disinfection used, and whether the treatment plant dechlorinates if disinfection is accomplished through chlorination;~~

~~(4) Effluent monitoring for specific parameters.~~

~~(a) As provided in paragraphs (b) through (j) of this subsection, all applicants shall submit to the cabinet effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the Commonwealth, except for CSOs. The cabinet may allow applicants to submit sampling data for only one (1) outfall on a case-by-case basis, if the applicant has two or more outfalls with substantially identical effluent. The cabinet may also allow applicants to composite samples from one (1) or more outfalls that discharge into the same mixing zone;~~

~~(b) All applicants shall sample and analyze for the pollutants listed in Table VI in Section 8(6) of this administrative regulation;~~

~~(c) All applicants with a design flow greater than or equal to one tenth (0.1) of one (1) mgd shall sample and analyze for the pollutants listed in Table VII in Section 8(7) of this administrative regulation. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine from Table VII;~~

~~(d) The following applicants shall sample and analyze for the pollutants listed in Table VIII in Section 8(8) of this administrative regulation, and for any other pollutants for which the cabinet or~~

~~EPA have established water quality standards applicable to the receiving waters:~~

~~1. All POTWs with a design flow rate equal to or greater than 1,000,000 gallons per day;~~

~~2. All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;~~

~~3. Other POTWs, as required by the cabinet;~~

~~(e) The cabinet may require sampling for additional pollutants, as appropriate, on a case-by-case basis;~~

~~(f) Applicants shall provide data from a minimum of three (3) samples taken within four and one-half (4 1/2) years prior to the date of the permit application. Samples shall be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The cabinet shall require additional samples, as appropriate, on a case-by-case basis;~~

~~(g) All existing data for pollutants specified in paragraphs (b) through (e) of this subsection that is collected within four and one-half (4 1/2) years of the application shall be included in the pollutant data summary submitted by the applicant. If the applicant samples for a specific pollutant on a monthly or more frequent basis, it shall only be necessary to summarize all data collected within one (1) year of the application for the pollutant;~~

~~(h) Applicants shall collect samples of effluent and analyze the samples for pollutants in accordance with analytical methods approved under 40 C.F.R. Part 136 unless an alternative is specified in the existing KPDES permit. Grab samples shall be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, twenty-four (24) hour composite samples shall be used. For a composite sample, only one (1) analysis of the composite of aliquots shall be required;~~

~~(i) The effluent monitoring data provided shall include at least the following information for each parameter:~~

~~1. Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;~~

~~2. Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;~~

~~3. The analytical method used; and~~

~~4. The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.~~

~~(j) Unless otherwise required by the cabinet, metals shall be reported as total recoverable.~~

~~(5) Effluent monitoring for whole effluent toxicity.~~

~~(a) All applicants shall provide an identification of any whole effluent toxicity tests conducted during the four and one-half (4 1/2) years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge;~~

~~(b) As provided in paragraphs (c) through (i) of this subsection, the following applicants shall submit to the cabinet the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:~~

~~1. All POTWs with design flow rates greater than or equal to 1,000,000 gallons per day;~~

~~2. All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;~~

~~3. Other POTWs, as required by the cabinet, based on consideration of the following factors:~~

~~a. The variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information, the type of treatment plant, and types of industrial contributors;~~

~~b. The ratio of effluent flow to receiving stream flow;~~

~~c. Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;~~

~~d. Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding state resource water; or~~

~~e. Other considerations, including but not limited to the history of toxic impacts and compliance problems at the POTW, that the cabinet determines could cause or contribute to adverse water quality impacts;~~

~~(c) If the POTW has two (2) or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the cabinet may allow applicants to submit whole effluent toxicity data for only one (1) outfall on a case-by-case basis. The cabinet may also allow applicants to composite samples from one (1) or more outfalls that discharge into the same mixing zone;~~

~~(d) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (b) of this subsection shall provide:~~

~~1. Results of a minimum of four (4) quarterly tests for a year, from the year preceding the permit application; or~~

~~2. Results from four (4) tests performed at least annually in the four and one-half (4 1/2) year period prior to the application, if the results show no appreciable toxicity using a safety factor determined by the cabinet;~~

~~(e) Applicants shall conduct tests with no less than two (2) species of fish, invertebrates, plants, etc., and shall test for acute or chronic toxicity, depending on the range of receiving water dilution. The applicant shall conduct acute or chronic testing based on the following dilutions:~~

~~1. Acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone;~~

~~2. Acute or chronic toxicity testing if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone. Acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1); and~~

~~3. Chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone;~~

~~(f) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (b) of this subsection shall provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance;~~

~~(g) Applicants shall provide the results using the form provided by the cabinet, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to paragraph (b) of this subsection for which such information has not been reported previously to the cabinet;~~

~~(h) Whole effluent toxicity testing conducted pursuant to paragraph (b) of this subsection shall be conducted using methods approved under 40 C.F.R. part 136;~~

~~(i) For whole effluent toxicity data submitted to the cabinet within four and one-half (4 1/2) years prior to the date of the application, applicants shall provide the dates on which the data were submitted and a summary of the results; and~~

~~(j) Each POTW required to perform whole effluent toxicity testing pursuant to paragraph (b) of this subsection shall provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half (4 1/2) years revealed toxicity;~~

~~(6) Industrial discharges. Applicants shall submit the following information about industrial discharges to the POTW:~~

~~(a) Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and~~

~~(b) POTWs with one (1) or more SIUs shall provide the following information for each SIU, as defined at 401 KAR 5:002, Section 1, that discharges to the POTW:~~

~~1. Name and mailing address;~~

~~2. Description of all industrial processes that affect or contribute to the SIU discharge;~~

~~3. Principal products and raw materials of the SIU that affect or contribute to the SIU discharge;~~

~~4. Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;~~

~~5. Whether the SIU is subject to local limits;~~

~~6. Whether the SIU is subject to categorical standards, and if so, under which categories and subcategories; and~~

~~7. Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past four and one-half (4 1/2) years.~~

~~(c) The information required in paragraphs (a) and (b) of this subsection may be waived by the cabinet for POTWs with pretreatment programs if the applicant has submitted either of the~~

~~following that contain information substantially identical to that required in paragraphs (a) and (b) of this subsection.~~

~~1. An annual report submitted within one (1) year of the application; or~~

~~2. A pretreatment program;~~

~~(d) POTWs with approved pretreatment programs shall provide a written technical evaluation of the need to revise local limits in accordance with 401 KAR 5:057;~~

~~(7) Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq., Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 6901 et seq., or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site shall provide the following information:~~

~~(a) If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 C.F.R. part 261, the applicant shall report the following:~~

~~1. The method by which the waste is received, and~~

~~2. The hazardous waste number and amount received annually of each hazardous waste;~~

~~(b) If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and sections 3004(u) or 3008(h) of RCRA, 42 U.S.C. 6924(u) and 6928(h), the applicant shall report the following:~~

~~1. The identity and description of the sites or facilities at which the wastewater originates;~~

~~2. The identities of the wastewater's hazardous constituents, if known; and~~

~~3. The extent of treatment, if any, the wastewater receives or will receive before entering the POTW, and~~

~~(c) Applicants shall be exempt from the requirements of paragraphs (a) and (b) of this subsection if they receive no more than fifteen (15) kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R. 261.30(d) and 261.33(e);~~

~~(8) Combined sewer overflows (CSO). Each applicant with combined sewer systems shall provide the following information:~~

~~(a) Combined sewer system information. The following information regarding the combined sewer system:~~

~~1. System map. A map indicating the location of the following:~~

~~a. All CSO discharge points;~~

~~b. Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding state resource waters); and~~

~~c. Waters supporting threatened and endangered species potentially affected by CSOs; and~~

~~2. System diagram. A diagram of the combined sewer collection system that includes the following information.~~

~~a. The location of major sewer trunk lines, both combined and separate sanitary;~~

~~b. The locations of points where separate sanitary sewers feed into the combined sewer system;~~

~~c. In-line and off-line storage structures;~~

~~d. The locations of flow-regulating devices; and~~

~~e. The locations of pump stations.~~

~~(b) Information on CSO outfalls. The following information for each CSO discharge point covered by the permit application:~~

~~1. Description of outfall. The following information on each outfall:~~

~~a. Outfall number;~~

~~b. State, county, and city or town in which outfall is located;~~

~~c. Latitude and longitude, to the nearest second; and~~

~~d. Distance from shore and depth below surface;~~

~~e. Whether the applicant monitored any of the following in the past year for this CSO:~~

~~(i) Rainfall;~~

~~(ii) CSO flow volume;~~

~~(iii) CSO pollutant concentrations;~~

~~(iv) Receiving water quality; or~~

~~(v) CSO frequency; and~~

~~f. The number of storm events monitored in the past year;~~

~~2. CSO events. The following information about CSO overflows from each outfall:~~

~~a. The number of events in the past year;~~

~~b. The average duration per event, if available;~~

~~c. The average volume per CSO event, if available; and~~

~~d. The minimum rainfall that caused a CSO event, if available, in the last year;~~

~~3. Description of receiving waters. The following information about receiving waters:~~

~~a. Name of receiving water;~~

~~b. Name of watershed or stream system and the United States Soil Conservation Service watershed 14 digit code if known; and~~

~~c. Name of State Management River Basin and the United States Geological Survey hydrologic cataloging unit eight (8) digit code if known, and~~

~~4. CSO operations. A description of any known water quality impacts on the receiving water caused by the CSO including permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable water quality standard;~~

~~(9) Contractors. All applicants shall provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility; and~~

~~(10) Signature. All applications shall be signed by a certifying official in compliance with Section 9 of this regulation.~~

~~Section 6. Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this administrative regulation for a period of at least three (3) years from the date the application is signed.~~

~~Section 7. Service of Process. Every applicant and permittee shall provide the cabinet an address for receipt of any legal document for service of process. The last address provided to the cabinet pursuant to this provision shall be the address at which the cabinet may tender any legal notice including but not limited to service of process in connection with any enforcement action.~~

~~Section 8. KPDES Application Testing Requirements. (1) Table I - Gas Chromatography/Mass Spectroscopy (GC-MS) Fractions per Industrial Category.~~

~~Industrial category~~	~~GC-MS Fraction*~~			
	~~Volatile~~	~~Acid~~	~~Neutral~~	~~Pesticide~~
~~Adhesives & sealants~~	~~(1)~~	~~(1)~~	~~(1)~~	
~~Aluminum forming~~	~~(1)~~	~~(1)~~	~~(1)~~	
~~Auto & other laundries~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Battery manufacturing~~	~~(1)~~		~~(1)~~	
~~Coal mining~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Coil Coating~~	~~(1)~~	~~(1)~~	~~(1)~~	
~~Copper forming~~	~~(1)~~	~~(1)~~	~~(1)~~	
~~Electric & electronic compounds~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Electroplating~~	~~(1)~~	~~(1)~~	~~(1)~~	
~~Explosives manufacturing~~		~~(1)~~	~~(1)~~	
~~Foundries~~	~~(1)~~	~~(1)~~	~~(1)~~	
~~Gum & Wood~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Inorganic chemicals manufacturing~~	~~(1)~~	~~(1)~~	~~(1)~~	
~~Iron & steel manufacturing~~	~~(1)~~	~~(1)~~	~~(1)~~	
~~Leather tanning & finishing~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Mechanical products manufacturing~~	~~(1)~~	~~(1)~~	~~(1)~~	

~~Nonferrous metals manufacturing~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Ore mining~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Organic chemicals manufacturing~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Paint & ink formulation~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Pesticides~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Petroleum refining~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Pharmaceutical preparations~~	~~(1)~~	~~(1)~~	~~(1)~~	
~~Photographic equipment & supplies~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Plastic & synthetic materials manufacturing~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Plastic processing~~	~~(1)~~			
~~Porcelain enameling~~	~~(1)~~		~~(1)~~	~~(1)~~
~~Printing & publishing~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Pulp & paperboard mills~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Rubber processing~~	~~(1)~~	~~(1)~~	~~(1)~~	
~~Soap & detergent manufacturing~~	~~(1)~~	~~(1)~~	~~(1)~~	
~~Steam electric power plants~~	~~(1)~~	~~(1)~~	~~(1)~~	
~~Textile mills~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~Timber products processing~~	~~(1)~~	~~(1)~~	~~(1)~~	~~(1)~~
~~[1] Testing required~~				
~~[2] Pollutants listed in Table II~~				

~~(2) Table II - Organic Toxic Pollutants in Each of Four (4) Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GC-MS)~~

~~Volatiles~~	~~Acid Compounds~~	~~Base/Neutral~~	~~Pesticides~~
~~1V acrolein~~	~~1A 2-chlorophenol~~	~~1B acenaphthene~~	~~1P aldrin~~
~~2V acrylonitrile~~	~~2A 2,4-dichlorophenol~~	~~2B acenaphthylene~~	~~2P alpha-BHC~~
~~3V benzene~~	~~3A 2,4-dimethylphenol~~	~~3B anthracene~~	~~3P beta-BHC~~
~~5V bromoform~~	~~4A 4,6-dinitro-o-cresol~~	~~4B benzidine~~	~~4P gamma-BHC~~
~~6V carbon tetrachloride~~	~~5A 2,4-dinitrophenol~~	~~5B benzo(a)anthracene~~	~~5P delta-BHC~~
~~7V chlorobenzene~~	~~6A 2-nitrophenol~~	~~6B benzo(a)pyrene~~	~~6P chlordane~~
~~8V chlorodibromomethane~~	~~7A 4-nitrophenol~~	~~7B 3,4-benzofluoranthene~~	~~7P 4,4'-DDT~~
~~9V chloroethane~~	~~8A p-chloro-m-cresol~~	~~8B benzo(ghi)perylene~~	~~8P 4,4'-DDE~~
~~10V 2-chloroethylvinyl ether~~	~~9A pentachlorophenol~~	~~9B benzo(k)fluoranthene~~	~~9P 4,4'-DDD~~
~~11V chloroform~~	~~10A phenol~~	~~10B bis(2-chloroethoxy)methane~~	~~10P dieldrin~~
~~12V dichlorobromomethane~~	~~11A 2,4,6-trichlorophenol~~	~~11B bis(2-chloroisopropyl)ether~~	~~11P alpha-endosulfan~~
~~14V 1,1-dichloroethane~~		~~12B bis(2-ethylhexyl)phthalate~~	~~12P beta-endosulfan~~
~~15V 1,2-dichloroethane~~		~~13B 4-bromophenyl phenyl ether~~	~~13P endosulfan sulfate~~
~~16V 1,1-dichloroethylene~~		~~14B butylbenzyl phthalate~~	~~14P endrin~~
~~17V 1,2-dichloropropane~~		~~15B 2-chloronaphthalene~~	~~15P endrin aldehyde~~
~~18V 1,3-dichloropropylene~~		~~16B 4-chlorophenyl phenyl ether~~	~~16P heptachlor~~
~~19V ethylbenzene~~		~~17B chrysene~~	~~17P heptachlor epoxide~~
~~20V methyl bromide~~		~~18B dibenzo(a,h)anthracene~~	~~18P PCB-1242~~
~~21V methyl chloride~~		~~19B 1,2-dichlorobenzene~~	~~19P PCB-1254~~
~~22V methylene chloride~~		~~20B 1,3-dichlorobenzene~~	~~20P PCB-1221~~
~~23V 1,1,2,2-tetrachloroethane~~		~~21B 1,4-dichlorobenzene~~	~~21P PCB-1232~~
~~24V tetrachloroethylene~~		~~22B 3,3'-dichlorobenzidine~~	~~22P PCB-1248~~
~~25V toluene~~		~~23B diethyl phthalate~~	~~23P PCB-1260~~
~~26V 1,2-trans-dichloroethylene~~		~~24B dimethyl phthalate~~	~~24P PCB-1016~~
~~27V 1,1,1-trichloroethane~~		~~25B di-n-butyl phthalate~~	~~25P toxaphene~~
~~28V 1,1,2-trichloroethane~~		~~26B 2,4-dinitrotoluene~~	
~~29V trichloroethylene~~		~~27B 2,6-dinitrotoluene~~	
~~31V vinyl chloride~~		~~28B di-n-octyl phthalate~~	
		~~29B 1,2-diphenylhydrazine (as azonbenzene)~~	
		~~30B fluroranthene~~	
		~~31B fluorene~~	
		~~32B hexachlorobenzene~~	
		~~33B hexachlorobutadiene~~	
		~~34B hexachlorocyclopentadiene~~	
		~~35B hexachloroethane~~	
		~~36B indeno(1,2,3-cd)pyrene~~	
		~~37B isophorone~~	
		~~38B napthalene~~	
		~~39B nitrobenzene~~	
		~~40B N-nitrosodimethylamine~~	
		~~41B N-nitrosodi-n-propylamine~~	
		~~42B N-nitrosodiphenylamine~~	
		~~43B phenanthrene~~	
		~~44B pyrene~~	
		~~45B 1,2,4-trichlorobenzene~~	

~~(3) Table III Other Toxic Pollutants (Metals and Cyanide) and Total Phenols~~

~~Antimony, Total~~
~~Arsenic, Total~~

~~Beryllium, Total~~
~~Cadmium, Total~~
~~Chromium, Total~~
~~Copper, Total~~
~~Lead, Total~~
~~Mercury, Total~~
~~Nickel, Total~~
~~Selenium, Total~~
~~Silver, Total~~
~~Thallium, Total~~
~~Zinc, Total~~
~~Cyanide, Total~~
~~Phenols, Total~~

~~(4) Table IV Conventional and Nonconventional Pollutants Required to Be Tested by Existing Dischargers If Expected to be present~~

~~Bromide~~
~~Chlorine, Total Residual~~
~~Color~~
~~Fecal Coliform~~
~~Fluoride~~
~~Nitrate Nitrite~~
~~Nitrogen, Total Organic~~
~~Oil and Grease~~
~~Phosphorus, Total~~
~~Radioactivity~~
~~Sulfate~~
~~Sulfide~~
~~Sulfite~~
~~Surfactants~~
~~Aluminum, Total~~
~~Barium, Total~~
~~Boron, Total~~
~~Cobalt, Total~~
~~Iron, Total~~
~~Magnesium, Total~~
~~Molybdenum, Total~~
~~Manganese, Total~~
~~Tin, Total~~
~~Titanium, Total~~

~~(5) Table V Toxic Pollutants and Hazardous Substances Required To Be Identified by Existing Dischargers If Expected To Be Present~~

~~Toxic Pollutants~~	~~Hazardous Substances~~	~~Hazardous Substances, continued~~
~~Asbestos~~	~~Acetaldehyde~~ ~~Allyl alcohol~~ ~~Allyl chloride~~ ~~Amyl acetate~~ ~~Aniline~~ ~~Benzonitrile~~ ~~Benzyl chloride~~ ~~Butyl acetate~~ ~~Butylamine~~ ~~Captan~~ ~~Carbaryl~~ ~~Carbofuran~~ ~~Carbon disulfide~~ ~~Chlorpyrifos~~ ~~Coumaphos~~ ~~Cresol~~ ~~Crotonaldehyde~~ ~~Cyclohexane~~ ~~2,4-D (2,4-Dichlorophenoxy acetic acid)~~ ~~Diazinon~~ ~~Dicamba~~ ~~Dichlobenil~~ ~~Dichlone~~ ~~2,2-Dichloropropionic acid~~ ~~Dichlorvos~~ ~~Diethyl amine~~ ~~Dimethyl amine~~ ~~Dintrobenzene~~ ~~Diquat~~ ~~Disulfoton~~	~~Malathion~~ ~~Mercaptodimethur~~ ~~Methoxychlor~~ ~~Methyl mercaptan~~ ~~Methyl methacrylate~~ ~~Methyl parathion~~ ~~Mevinphos~~ ~~Mexacarbate~~ ~~Monoethyl amine~~ ~~Monomethyl amine~~ ~~Naled~~ ~~Napthenic acid~~ ~~Nitrotoluene~~ ~~Parathion~~ ~~Phenolsulfanate~~ ~~Phosgene~~ ~~Propargite~~ ~~Propylene oxide~~ ~~Pyrethrins~~ ~~Quinoline~~ ~~Resorcinol~~ ~~Strontium~~ ~~Strychnine~~ ~~Styrene~~ ~~2,4,5-T (2,4,5-Trichlorophenoxy acetic acid)~~ ~~TDE (Tetrachlorodiphenylethane)~~ ~~2,4,5-TP(2-2,4,5-Trichlorophenoxy)propanoic acid~~ ~~Trichlorofan~~

	~~Diuron~~ ~~Epichlorohydrin~~ ~~Ethion~~ ~~Ehtylene diamine~~ ~~Ethylene dibromide~~ ~~Formaldehyde~~ ~~Furfural~~ ~~Guthion~~ ~~Isoprene~~ ~~Isopropanolamine~~ ~~Dodecylbenzenesulfonate~~ ~~Kelthane~~ ~~Kepone~~	~~Triethanolamine dodecylbenzenesulfonate~~ ~~Triethylamine~~

~~(6) Table VI - Effluent Parameters for All POTWs~~

~~Biochemical oxygen demand (BOD-5 or CBOD-5)~~ ~~Fecal coliform~~ ~~Design Flow Rate~~ ~~PH~~ ~~Temperature~~ ~~Total suspended solids~~

~~(7) Table VII - Effluent Parameters for All POTWs with a Flow Equal to or Greater than 0.1 MGD~~

~~Ammonia (as N)~~ ~~Chlorine (total residual, TRC)~~ ~~Dissolved oxygen~~ ~~Nitrate/Nitrite~~ ~~Kjeldahl nitrogen~~ ~~Oil and grease~~ ~~Phosphorus~~ ~~Total dissolved solids~~

~~(8) Table VIII – Effluent Parameters for Selected POTWs~~

~~Volatile Organic Compounds~~	~~Acid Extractable Compounds~~	~~Base/Neutral Compounds~~	~~Metals (total recoverable), cyanide and total phenols~~
~~Acrolein~~ ~~Acrylonitrile~~ ~~Benzene~~ ~~Bromoform~~ ~~Carbon tetrachloride~~ ~~Chlorobenzene~~ ~~Chlorodibromomethane~~ ~~Chloroethane~~ ~~2-chloroethylvinyl ether~~ ~~Chloroform~~ ~~Dichlorobromomethane~~ ~~1,1-dichloroethane~~ ~~1,2-dichloroethane~~ ~~Trans-1,2-dichloroethylene~~ ~~1,1-dichloroethylene~~ ~~1,2-dichloropropane~~ ~~1,3-dichloropropylene~~ ~~Ethylbenzene~~ ~~Methyl bromide~~ ~~Methyl chloride~~ ~~Methylene chloride~~ ~~1,1,2,2-tetrachloroethane~~ ~~Tetrachloroethylene~~ ~~Toluene~~ ~~1,1,1-trichloroethane~~ ~~1,1,2-trichloroethane~~ ~~Trichloroethylene~~ ~~Vinyl chloride~~	~~P-chloro-m-cresc~~ ~~2-chlorophenol~~ ~~2,4-dichlorophenol~~ ~~2,4-dimethylphenol~~ ~~4,6-dinitro-o-cresol~~ ~~2,4-dinitrophenol~~ ~~2-nitrophenol~~ ~~4-nitrophenol~~ ~~Pentachlorophenol~~ ~~Phenol~~ ~~2,4,6-trichlorophenol~~	~~Acenaphthene~~ ~~Acenaphthylene~~ ~~Anthracene~~ ~~Benzidine~~ ~~Benzo(a)anthracene~~ ~~Benzo(a)pyrene~~ ~~3,4 benzofluoranthene~~ ~~Benzo(ghi)perylene~~ ~~Benzo(k)fluoranthene~~ ~~Bis (2-chloroethoxy) methane~~ ~~Bis (2-chloroethyl) ether~~ ~~Bis (2-chloroisopropyl) ether~~ ~~Bis (2-ethylhexyl) phthalate~~ ~~4-bromophenyl phenyl ether~~ ~~Butyl benzyl phthalate~~ ~~2-chloronaphthalene~~ ~~4-chlorophenyl phenyl ether~~ ~~Chrysene~~ ~~Di-n-butyl phthalate~~ ~~Di-n-octyl phthalate~~ ~~Dibenzo(a,h)anthracene~~ ~~1,2-dichlorobenzene~~ ~~1,3-dichlorobenzene~~ ~~1,4-dichlorobenzene~~ ~~3,3-dichlorobenzidine~~ ~~Diethyl phthalate~~ ~~Dimethyl phthalate~~ ~~2,4-dinitrotoluene~~ ~~2,6-dinitrotoluene~~ ~~1,2-diphenylhydrazine~~ ~~Fluoranthene~~ ~~Fluorene~~ ~~Hexachlorobenzene~~ ~~Hexachlorobutadiene~~ ~~Hexachlorocyclo-pentadiene~~ ~~Hexachloroethane~~	~~Hardness~~ ~~Antimony~~ ~~Arsenic~~ ~~Beryllium~~ ~~Cadmium~~ ~~Chromium~~ ~~Copper~~ ~~Lead~~ ~~Mercury~~ ~~Nickel~~ ~~Selenium~~ ~~Silver~~ ~~Thallium~~ ~~Zinc~~ ~~Cyanide~~ ~~Total phenolic compounds~~

Volatile Organic Compounds	Acid Extractable Compounds	Base/Neutral Compounds	Metals (total recoverable), cyanide and total phenols
		Indeno(1,2,3-cd)pyrene Isophorone Naphthalene Nitrobenzene N-nitrosodi-n-propylamine N-nitrosodimethylamine N-nitrosodiphenylamine Phenanthrene Pyrene 1,2,4, trichlorobenzene	

Section 9. Signatories to Permit Applications and Reports. (1) Applications. All permit applications shall be signed as follows:

(a) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer shall be:

1. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

2. The manager of one (1) or more manufacturing, production, or operating facilities, if, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements, and if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency shall include:

1. The chief executive officer of the agency, or

2. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA).

(2) All reports required by permits, and other information requested by the cabinet shall be signed by a person described in subsection (1) of this section, or by a duly authorized representative of that person. A person shall be a duly authorized representative only if:

(a) The authorization is made in writing by a person described in subsection (1) of this section;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position, and

(c) The written authorization is submitted to the cabinet.

(3) Changes to authorization. If an authorization under subsection (2) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (2) of this section shall be submitted to the cabinet prior to or together with any reports, information, or applications to be signed by an authorized representative.

(4) Certification. Any person signing a document under subsections (1) or (2) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Section 10. Concentrated Animal Feeding Operations. (1) Permit requirement. Concentrated animal feeding operations are point sources subject to the KPDES permit program.

(2) Case-by-case designation of concentrated animal feeding operations.

(a) The cabinet may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the Commonwealth. In making this designation the cabinet shall consider the following factors:

1. The size of the animal feeding operation and the amount of wastes reaching waters of the Commonwealth;

2. The location of the animal feeding operation relative to waters of the Commonwealth;

3. The means of conveyance of animal wastes and process waste waters into waters of the Commonwealth;

4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the Commonwealth, and

5. Other relevant factors.

(b) No animal feeding operation with less than the numbers of animals defined in 401 KAR 5:002 shall be designated as a concentrated animal feeding operation unless:

1. Pollutants are discharged into waters of the Commonwealth through a manmade ditch, flushing system, or other similar manmade device; or

2. Pollutants are discharged directly into waters of the Commonwealth which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals or their wastes confined in the operation.

(c) A permit application shall not be required from a concentrated animal feeding operation designated under this subsection until the cabinet has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

Section 11. Concentrated Aquatic Animal Production Facilities. (1) Permit requirement. Concentrated aquatic animal production facilities, as set forth in this section, are point sources subject to the KPDES permit program.

(2) A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this section if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water fish species or other cold water aquatic animals, including, but not limited to, the Salmonidae family of fish; e.g., trout and salmon, in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:

1. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

2. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(b) Warm water fish species or other warm water aquatic animals, including, but not limited to, the Ameiurids, Centrarchidae

~~and Cyprinidae families of fish; e.g., respectively, catfish, sunfish and minnows, in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:~~

~~1. Closed ponds which discharge only during periods of excess runoff; or~~

~~2. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.~~

~~(3) Case-by-case designation of concentrated aquatic animal production facilities.~~

~~(a) The cabinet may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the Commonwealth. In making this designation the cabinet shall consider the following factors:~~

~~1. The location and quality of the receiving waters of the Commonwealth;~~

~~2. The holding, feeding, and production capacities of the facility;~~

~~3. The quantity and nature of the pollutants reaching waters of the Commonwealth; and~~

~~4. Other relevant factors.~~

~~(b) A permit application shall not be required from a concentrated aquatic animal production facility designated under this subsection until the cabinet has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.~~

~~Section 12. Storm Water Discharges. (1) Permit requirement.~~

~~(a) Prior to October 1, 1992, discharges composed entirely of storm water shall not be required to obtain a KPDES permit except:~~

~~1. A discharge with respect to which a permit has been issued prior to February 4, 1987;~~

~~2. A discharge associated with industrial activity (see also paragraph (d) of this subsection);~~

~~3. A discharge from a large municipal separate storm sewer system;~~

~~4. A discharge from a medium municipal separate storm sewer system; and~~

~~5. A discharge which the cabinet or the EPA regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Commonwealth. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (b) of this subsection or agricultural storm water runoff which is exempted from the definition of point source in 401 KAR 5:002. The cabinet may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the cabinet may consider the following factors:~~

~~a. The location of the discharge with respect to waters of the Commonwealth;~~

~~b. The size of the discharge;~~

~~c. The quantity and nature of the pollutants discharged to waters of the Commonwealth; and~~

~~d. Other relevant factors.~~

~~(b) The cabinet shall not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances including but not limited to pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of these operations.~~

~~(c) Large and medium municipal separate storm sewer systems.~~

~~1. Permits shall be obtained for all discharges from large and medium municipal separate storm sewer systems.~~

~~2. The cabinet may either issue one (1) system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to all discharges owned or operated by the same municipality, located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.~~

~~3. The owner or operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system shall either:~~

~~a. Participate in a permit application, i.e., be a permittee or a copermittee, with one (1) or more other owner or operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;~~

~~b. Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the owner or operator is responsible; or~~

~~c. A regional authority may be responsible for submitting a permit application under the following guidelines:~~

~~(i) The regional authority together with coapplicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time Part 1 of the application is due;~~

~~(ii) The permit applicant or coapplicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application; and~~

~~(iii) Each of the owners or operators of municipal separate storm sewers within the systems defined in 401 KAR 5:002, that are under the purview of the designated regional authority, shall comply with the application requirements of subsection (3) of this section.~~

~~4. One (1) permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The cabinet may issue one (1) system-wide permit covering all or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.~~

~~5. Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.~~

~~6. Copermittees shall only be required to comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are owners or operators.~~

~~(d) Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of subsection (2) of this section, an owner or operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the owner or operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing this discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing KPDES permit number.~~

~~(e) Other municipal separate storm sewers. The cabinet may issue permits for municipal separate storm sewers that are designated under paragraph (a)5 of this subsection on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.~~

~~(f) Nonmunicipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a nonmunicipal or nonpublicly owned separate storm sewer system, the cabinet may issue a single KPDES permit, with each discharger a copermittee to a permit issued to the owner or operator of the portion of the system that discharges into waters of the Commonwealth; or, individual permits to each discharger of storm water associated with industrial activity through~~

~~the nonmunicipal conveyance system.~~

~~1. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer shall be covered by an individual permit, or a permit issued to the owner or operator of the portion of the system that discharges to waters of the Commonwealth, with each discharger to the nonmunicipal conveyance a copermittee to that permit.~~

~~2. If there is more than one (1) owner or operator of a single system of nonmunicipal conveyances, all operators of storm water discharges associated with industrial activity shall submit applications.~~

~~3. Any permit covering more than one (1) owner or operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.~~

~~(g) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that shall obtain KPDES permits in accordance with the procedures of Section 5 of this administrative regulation and shall not be subject to the provisions of this section.~~

~~(h) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under the Clean Water Act, 33 U.S.C. 1251 et seq. See 40 C.F.R. Part 35, Subpart I, Appendix A.~~

~~(i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by subsection (1)(a) of this section to obtain a permit, operators shall be required to obtain a KPDES permit only if:~~

~~1. The discharge is from a small MS4 required to be regulated pursuant to subsection (7) of this section;~~

~~2. The discharge is a storm water discharge associated with small construction activity pursuant to 401 KAR 5:002;~~

~~3. The cabinet, or the EPA Regional Administrator, determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern, or~~

~~4. The cabinet, or the EPA Regional Administrator, determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Commonwealth.~~

~~(j) Operators of small MS4s designated pursuant to paragraph (i)1, 3, and 4 of this subsection shall seek coverage under an KPDES permit in accordance with subsections (8) through (10) of this section. Operators of nonmunicipal sources designated pursuant to paragraph (i)2, 3, and 4 of this subsection shall seek coverage under an KPDES permit in accordance with subsection (2)(a) of this section.~~

~~(k) Operators of storm water discharges designated pursuant to paragraph (i)3 and 4 of this subsection shall apply to the cabinet for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the cabinet.~~

~~(2) Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity.~~

~~(a) Individual application. Dischargers of storm water associated with industrial activity and with small construction activity shall apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the cabinet is evaluating for designation under paragraph (a)5 of this subsection and is not a municipal separate storm sewer shall submit a KPDES application in accordance with the requirements of Section 3 of this administrative regulation as modified and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Form 1 and Form F. Applicants for discharges composed of storm water and nonstorm water shall submit Form 1, Form Short C, and Form F.~~

~~1. Except as provided in subparagraphs 2, 3, and 4 of this paragraph the owner or operator of a storm water discharge associated with industrial activity subject to this section shall provide:~~

~~a. A site map showing topography, or indicating the outline of drainage areas served by the outfalls covered in the application if a topographic map is unavailable, of the facility including: each of its drainage and discharge structures, the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall; each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities, including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 C.F.R. 262.34, each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;~~

~~b. An estimate of the area of impervious surfaces, including paved areas and building roofs, and the total area drained by each outfall, within a mile radius of the facility, and a narrative description of the following: significant materials that in the three (3) years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of the materials, materials management practices employed, in the three (3) years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied, the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff, and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;~~

~~c. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of nonstorm water discharges which are not covered by a KPDES permit; tests for these nonstorm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;~~

~~d. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three (3) years prior to the submittal of this application;~~

~~e. Quantitative data based on samples collected during storm events and collected in accordance with Section 3 of this administrative regulation from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:~~

~~(i) Any pollutant limited in an effluent guideline to which the facility is subject;~~

~~(ii) Any pollutant listed in the facility's KPDES permit for its process wastewater, if the facility is operating under an existing KPDES permit;~~

~~(iii) Oil and grease, pH, BOD, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;~~

~~(iv) Any information on the discharge required under Section 2(7)(f) and (g) of this administrative regulation;~~

~~(v) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm events sampled, and the method of flow measurement or estimation, and~~

~~(vi) The date and duration in hours of the storm events sampled, rainfall measurements or estimates of the storm event in inches which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event in hours;~~

~~f. Owners or operators of a discharge which is composed entirely of storm water shall be exempt from the requirements of Section 2(2), (3), (4), (5), and (7)(a), (b) and (e) of this administrative regulation; and~~

~~g. Owners or operators of new sources or new discharges which are composed in part or entirely of storm water shall include estimates for the pollutants or parameters listed in clause e of this subparagraph instead of actual sampling data, along with the source of each estimate. Owners or operators of new sources or~~

~~new discharges composed in part or entirely of storm water shall provide quantitative data for the parameters listed in clause e of this subparagraph within two (2) years after commencement of discharge, unless data have already been reported under the monitoring requirements of the KPDES permit for the discharge.~~

~~2. The owner or operator of an existing or new storm water discharge that is storm water associated with construction activity solely as defined in 401 KAR 5:002 or is associated with small construction activity solely as defined in 401 KAR 5:002, shall be exempt from the requirements of Section 2 of this administrative regulation and subparagraph 1 of this paragraph. The owner or operator shall provide a narrative description of:~~

~~a. The location, including a map, and the nature of the construction activity;~~

~~b. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;~~

~~c. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements;~~

~~d. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements;~~

~~e. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and~~

~~f. The name of the receiving water.~~

~~3. The owner or operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility shall not be required to submit a permit application in accordance with subparagraph 1 of this paragraph unless the facility:~~

~~a. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 C.F.R. 117.21 or 40 C.F.R. 302.6 at anytime since November 16, 1987;~~

~~b. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 C.F.R. 110.6 at any time since November 16, 1987; or~~

~~c. Contributes to a violation of a water quality standard.~~

~~4. The owner or operator of an existing or new discharge composed entirely of storm water from a mining operation shall not be required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of these operations.~~

~~5. Applicants shall provide such other information the cabinet may reasonably require under Section 2(12) of this administrative regulation to determine whether to issue a permit and may require any facility subject to subparagraph 2 of this paragraph to comply with subparagraph 1 of this paragraph.~~

~~(b) Group application for discharges associated with industrial activity. In lieu of individual applications or notice of intent to be covered by a general permit for storm water discharges associated with industrial activity, a group application may be filed by an entity representing a group of applicants, except facilities that have existing individual KPDES permits for storm water, that are part of the same subcategory (see 40 C.F.R. Chapter I, Subchapter N, Part 405 to 471) or, if such grouping is inapplicable, are sufficiently similar as to be appropriate for general permit coverage under 401 KAR 5:055, Section 5. The Part 1 application shall be submitted to the Office of Water Enforcement and Permits, U.S. EPA, 401 M Street, SW, Washington, DC 20460 (EN-336) for approval. Once a Part 1 application is approved, group applicants shall submit Part 2 of the group application to the Office of Water Enforcement and Permits. A group application shall consist of:~~

~~1. Part 1. Part 1 of a group application shall:~~

~~a. Identify the participants in the group application by name and location. Kentucky facilities participating in the group application are listed in precipitation zone 2 as given in Appendix E of 40 C.F.R. Part 122;~~

~~b. Include a narrative description summarizing the industrial activities of participants of the group application and explaining why the participants, as a whole, are sufficiently similar to be a covered by a general permit;~~

~~c. Include a list of significant materials stored exposed to precipitation by participants in the group application and materials management practices employed to diminish contact by these materials with precipitation and storm water runoff, and~~

~~d. Identify ten (10) percent of the dischargers participating in the group application, with a minimum of ten (10) dischargers, and either a minimum of two (2) dischargers from each precipitation zone indicated in Appendix E of 40 C.F.R. Part 122 in which ten (10) or more members of the group are located, or one (1) discharger from each precipitation zone indicated in Appendix E of 40 C.F.R. Part 122 in which nine (9) or fewer members of the group are located, from which quantitative data will be submitted in Part 2. If more than 1,000 facilities are identified in a group application, no more than 100 dischargers shall submit quantitative data in Part 2. Groups of between four (4) and ten (10) dischargers may be formed. In groups of between four (4) and ten (10), at least half the facilities shall submit quantitative data, and at least one (1) facility in each precipitation zone in which members of the group are located shall submit data. A description of why the facilities selected to perform sampling and analysis are representative of the group as a whole in terms of the information provided in clauses b and c of this subparagraph, shall accompany this section of the application. Different factors impacting the nature of the storm water discharges, such as processes used and material management, shall be represented, to the extent feasible, in a manner roughly equivalent to their proportion in the group.~~

~~2. Part 2. Part 2 of a group application shall contain quantitative data (NPDES Form 2F), as modified by paragraph (a) of this subsection, so that when Part 1 and Part 2 of the group application are taken together, a complete NPDES application (Form 1, Form 2C, and Form 2F) can be evaluated for each discharger identified in subparagraph 1d of this paragraph.~~

~~(3) Application requirements for large and medium municipal separate storm sewer discharges. The owner or operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the cabinet under subsection (1)(a)5 of this section, may submit a jurisdiction-wide or system-wide permit application. If more than one (1) public entity owns or operates a municipal separate storm sewer within a geographic area including adjacent or interconnected municipal separate storm sewer systems, the owners or operators may be coapplicants to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under subsection (1)(a)5 of this section shall include:~~

~~(a) Part 1. Part 1 of the application shall consist of:~~

~~1. General information. The applicants' name, address, telephone number of contact person, ownership status and status as a state or local government entity.~~

~~2. Legal authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. If existing legal authority is not sufficient to meet the criteria provided in paragraph (b)1 of this subsection, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek the additional authority that will be needed to meet the criteria.~~

~~3. Source identification.~~

~~a. A description of the historic use of ordinances, guidance or other controls which limited the discharge of nonstorm water discharges to any POTW serving the same area as the municipal separate storm sewer system.~~

~~b. A USGS seven and one half (7.5) minute topographic map, or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective, extending one (1) mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:~~

~~(i) The location of known municipal storm sewer system outfalls discharging to waters of the Commonwealth;~~

~~(ii) A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural and in-~~

~~dustrial uses) accompanied with estimates of population densities and projected growth for a ten (10) year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;~~

~~(iii) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;~~

~~(iv) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a KPDES permit;~~

~~(v) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and~~

~~(vi) The identification of publicly owned parks, recreational areas, and other open lands.~~

~~4. Discharge characterization.~~

~~a. Monthly mean rain and snow fall estimates or summary of weather bureau data and the monthly average number of storm events.~~

~~b. Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.~~

~~c. A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments and lakes, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving these discharges have been:~~

~~(i) Assessed and reported in Section 305(b), 33 U.S.C. 1315(b) reports submitted by the Commonwealth, the basis for the assessment, evaluated or monitored, a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;~~

~~(ii) Listed under Section 304(l)(1)(A)(i), Section 304(l)(1)(A)(ii), or Section 304(l)(1)(B) of the CWA, 33 U.S.C. 1314(l)(1)(B) that is not expected to meet water quality standards or water quality goals;~~

~~(iii) Listed in state nonpoint source assessments required by Section 319(a) of the CWA, 33 U.S.C. 1329(a), that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution, or contributing to a violation of water quality standards;~~

~~(iv) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under Section 314(a) of the CWA, 33 U.S.C. 1324(a). The following shall be included: a description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into these lakes; and a description of methods and procedures to restore the quality of these lakes;~~

~~(v) Recognized by the applicant as highly valued or sensitive waters;~~

~~(vi) Defined by the U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and~~

~~(vii) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.~~

~~d. Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two (2) grab samples shall be collected during a twenty-four (24) hour period with a minimum period of four (4) hours between samples. For all samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of nonstorm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (surfactants) shall be provided along with a description of the flow rate. If the field analysis does not involve analytical methods referenced in 40 C.F.R. Part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls, other outfall points or any other point of access such as manholes randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:~~

~~(i) A grid system consisting of perpendicular north-south and east-west lines spaced one fourth (1/4) mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;~~

~~(ii) All cells that contain a segment of the storm sewer system shall be identified; one (1) field screening point shall be selected in each cell, major outfalls may be used as field screening points;~~

~~(iii) Field screening points should be located downstream of any sources of suspected illegal or illicit discharge;~~

~~(iv) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell. Safety of personnel and accessibility of the location shall be considered in making this determination;~~

~~(v) Hydrological conditions, total drainage area of the site, population density of the site, traffic density; age of the structures or buildings in the area; history of the area, and land use types;~~

~~(vi) For medium municipal separate storm sewer systems, at least 250 cells shall have identified field screening points, in large municipal separate storm sewer systems, at least 500 cells shall have identified field screening points; cells established by the grid that contain no storm sewer segments shall be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening, unless access to the separate storm sewer system is impossible, and~~

~~(vii) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in clause d(i) through (vi) of this subparagraph, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively, or all major outfalls in the system, if less. In these circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced one fourth (1/4) mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells. The applicant shall then select major outfalls in as many cells as possible until at least 500 major outfalls for large municipalities or 250 major outfalls for medium municipalities are selected; a field screening analysis shall be undertaken at these major outfalls.~~

~~e. Characterization plan. Information and a proposed program to meet the requirements of paragraph (b)3 of this subsection. The description shall include: the location of outfalls or field screening points appropriate for representative data collection under paragraph (b)3a of this subsection, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for sampling shall reflect water quality concerns (see clause c of this subparagraph to the extent practicable.~~

~~5. Management programs.~~

~~a. A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Controls may include, but are not limited to procedures to control pollution resulting from construction activities; floodplain management controls, wetland protection measures; best management practices~~

~~for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements.~~

~~b. A description of the existing program to identify illicit connections to the municipal storm sewer system. The description shall include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.~~

~~6. Fiscal resources. A description of the financial resources currently available to the municipality to complete Part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs shall be provided.~~

~~(b) Part 2. Part 2 of the application shall consist of:~~

~~1. Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:~~

~~a. Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;~~

~~b. Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;~~

~~c. Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;~~

~~d. Control through interagency agreements among coapplicants the contribution of pollutants from one (1) portion of the municipal system to another portion of the municipal system;~~

~~e. Require compliance with conditions in ordinances, permits, contracts or orders; and~~

~~f. Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.~~

~~2. Source identification. List the locations of any major outfalls that discharge to waters of the Commonwealth that were not reported under paragraph (a)3b(i) of this subsection. Provide an inventory, organized by watershed of the name and address, and a description, such as SIC codes, which best reflects the principal products or services provided by each facility which may discharge to the municipal separate storm sewer, storm water associated with industrial activity;~~

~~3. Characterization data. If quantitative data for a pollutant are required under paragraph (a)3a(iii) of this subsection, the applicant shall collect a sample of effluent in accordance with Section 2(7) of this administrative regulation and analyze it for the pollutant in accordance with analytical methods referenced in 40 C.F.R. Part 136. If no analytical method is approved the applicant may use any suitable method but shall provide a description of the method. The applicant shall provide information characterizing the quality and quantity of discharges covered in the permit application, including:~~

~~a. Quantitative data from representative outfalls designated by the cabinet. Based on information received in Part 1 of the application, the cabinet shall designate between five (5) and ten (10) outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system. If there are less than five (5) outfalls covered in the application, the cabinet shall designate all outfalls. A monitoring plan shall be developed as follows:~~

~~(i) For each outfall or field screening point designated under this clause, samples shall be collected of storm water discharges from three (3) storm events occurring at least one (1) month apart in accordance with the requirements at Section 2(7) of this administrative regulation. The cabinet may allow exemptions to sampling three (3) storm events if climatic conditions create good cause for these exemptions;~~

~~(ii) A narrative description shall be provided of the date and duration of the storm events sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous greater than one-tenth (0.1) inch rainfall storm event;~~

~~(iii) For samples collected and described under subclause (i) and (ii) of this clause, quantitative data shall be provided for the pollutants listed in Section 8(2) and (3) of this administrative regulation, and for the following pollutants:~~

~~Total suspended solids (TSS)~~
~~Total dissolved solids (TDS)~~
~~COD~~
~~BOD~~
~~Oil and grease~~
~~Fecal coliform~~
~~Fecal streptococcus~~
~~pH~~
~~Total Kjeldahl nitrogen~~
~~Nitrate plus nitrite~~
~~Dissolved phosphorus~~
~~Total ammonia plus organic nitrogen~~
~~Total phosphorus~~

~~(iv) List additional limited quantitative data required by the cabinet for determining permit conditions. The cabinet may require that quantitative data be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snowmelt, rainfall) and other parameters necessary to insure representativeness;~~

~~b. Estimates of the annual pollutant load of the cumulative discharges to waters of the Commonwealth from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the Commonwealth from all identified municipal outfalls during a storm event for BOD, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;~~

~~c. A proposed schedule to provide estimates for each major outfall identified in either subparagraph 2 of this paragraph or paragraph (a)3b(i) of this subsection of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under clause a of this subparagraph; and~~

~~d. A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled, or the location of instream stations, why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.~~

~~4. Proposed management program. A proposed management program shall cover the duration of the permit. It shall include a comprehensive planning process which involves public participation and if necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a system-wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs shall be considered by the cabinet when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. The programs shall be based on:~~

~~a. A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:~~

~~(i) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants, including floatables, in discharges from municipal separate storm sewers;~~

~~(ii) A description of planning procedures including a compre-~~

~~hensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. The plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in clause d of this subparagraph;~~

~~(iii) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;~~

~~(iv) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;~~

~~(v) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for the discharges. This program may be coordinated with the program developed under clause e of this subparagraph; and~~

~~(vi) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which shall include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.~~

~~b. A description of a program, including a schedule, to detect and remove, or require the discharger to the municipal separate storm sewer to obtain a separate KPDES permit for, illicit discharges and improper disposal into the storm sewer. The proposed program shall include:~~

~~(i) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system. This program description shall address all types of illicit discharges. The following category of nonstorm water discharges or flows shall be addressed if the discharges are identified by the municipality as sources of pollutants to waters of the Commonwealth: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as specified at 40 C.F.R. 35.2005(b)(20)) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. Program descriptions shall address discharges or flows from firefighting only if the discharges or flows are identified as significant sources of pollutants to waters of the Commonwealth;~~

~~(ii) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by the field screens;~~

~~(iii) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of nonstorm water. The procedures may include sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium, testing with fluorometric dyes, or conducting in storm sewer inspections if safety and other considerations allow. The description shall include the location of storm sewers that have been identified for the evaluation;~~

~~(iv) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;~~

~~(v) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;~~

~~(vi) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and~~

~~(vii) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems if necessary.~~

~~c. A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 U.S.C. 11023), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:~~

~~(i) Identify priorities and procedures for inspections and establishing and implementing control measures for these discharges; and~~

~~(ii) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in clause c of this subparagraph, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, if applicable; any pollutant listed in an existing KPDES permit for a facility; oil and grease, COD, pH, BOD, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under Section 2(7)(f) and (g) of this administrative regulation.~~

~~d. A description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:~~

~~(i) A description of procedures for site planning which incorporate consideration of potential water quality impacts;~~

~~(ii) A description of requirements for nonstructural and structural best management practices;~~

~~(iii) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and~~

~~(iv) A description of appropriate educational and training measures for construction site operators.~~

~~5. Assessment of controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.~~

~~6. Fiscal analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under subparagraphs 3 and 4 of this paragraph. This analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of the funds.~~

~~7. If more than one (1) legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.~~

~~8. If requirements under paragraph (a)4c of this subsection and subparagraphs 2, 3b, and 4 of this paragraph are not practicable or are not applicable, the cabinet may exclude any operator of a discharge from a municipal separate storm sewer which is designated under subsection (1)(a)5, (2)(d)2 or (2)(g)2 of this section from these requirements. The cabinet shall not exclude the owner or operator of a discharge from a municipal separate storm sewer identified in 40 C.F.R. 122, Appendix F, G, H, or I, from any of the permit application requirements under this subparagraph except if authorized under this section.~~

~~(4) Application deadlines. Any owner or operator of a point source required to obtain a permit under subsection (1)(a) of this~~

~~section that does not have an effective KPDES permit covering its storm water outfalls shall submit an application in accordance with the following deadlines:~~

~~(a) Individual applications.~~

~~1. Except as provided in subparagraph 2 of this paragraph, for any storm water discharge associated with industrial activity defined in 401 KAR 5:002 that is not part of a group application as described in subsection (2)(b) of this section or which is not authorized by a storm water general permit, a permit application made pursuant to subsection (2) of this section shall be submitted to the cabinet by October 1, 1992;~~

~~2. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, the permit application shall be submitted by March 10, 2003.~~

~~(b) For any group application submitted in accordance with subsection (2)(b) of this section:~~

~~1. Part 1.~~

~~a. Except as provided in clause b of this subparagraph, Part 1 of the application shall be submitted to the U.S. EPA Director, Office of Water Enforcement and Permits by September 30, 1991;~~

~~b. Any municipality with a population of less than 250,000 shall be required to submit a Part 1 application before May 18, 1992; and~~

~~c. For any storm water discharge associated with industrial activities from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, permit applications shall not be required.~~

~~2. Based on information in the Part 1 application, the director shall approve or deny the members in the group application within sixty (60) days after receiving Part 1 of the group application.~~

~~3. Part 2.~~

~~a. Except as provided in clause b of this subparagraph, Part 2 of the application shall be submitted to the Director, Office of Water Enforcement and Permits by October 1, 1992;~~

~~b. Any municipality with a population of less than 250,000 shall not be required to submit a Part 1 application before May 17, 1993; and~~

~~c. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant or uncontrolled sanitary landfill, permit applications shall not be required.~~

~~4. Rejected facilities.~~

~~a. Except as provided in clause b of this subparagraph, facilities that are rejected as members of a group shall submit an individual application or obtain coverage under an applicable general permit no later than twelve (12) months after the date of receipt of the notice of rejection or October 1, 1992, which ever comes first.~~

~~b. Facilities that are owned or operated by a municipality and that are rejected as members of Part I group application shall submit an individual application no later than 180 days after the date of the receipt of the notice of registration or October 1, 1992, whichever is later.~~

~~5. A facility defined as a storm water associated with industrial activity in 401 KAR 5:002 may add on to a group application submitted in accordance with subparagraph 1 of this paragraph at the discretion of the U.S. EPA Office of Water Enforcement and Permits, if there is a showing of good cause by the facility and the group applicant; the request for the addition of the facility shall be made no later than February 18, 1992. The addition of the facility shall not cause the percentage of the facilities that are required to submit quantitative data to be less than ten (10) percent, unless there are over 100 facilities in the group that are submitting quantitative data. Approval to become part of group application shall be obtained from the group or the trade association representing the individual facilities.~~

~~(c) For any discharge from a large municipal separate storm sewer system:~~

~~1. Part 1 of the application shall be submitted to the cabinet by November 18, 1991;~~

~~2. Based on information received in the Part 1 application the cabinet shall approve or deny a sampling plan under subsection (3)(a)4c of this section within ninety (90) days after receiving the Part 1 application; and~~

~~3. Part 2 of the application shall be submitted to the cabinet by November 16, 1992.~~

~~(d) For any discharge from a medium municipal separate storm sewer system:~~

~~1. Part 1 of the application shall be submitted to the cabinet by May 18, 1992.~~

~~2. Based on information received in the Part 1 application the cabinet shall approve or deny a sampling plan within ninety (90) days after receiving the Part 1 application.~~

~~3. Part 2 of the application shall be submitted to the cabinet by May 17, 1993.~~

~~(e) For any discharge from a regulated small MS4, the permit application made under subsection (8) of this section shall be submitted to the cabinet by:~~

~~1. March 10, 2003 if designated under subsection (7)(a)1 of this section unless the MS4 serves a jurisdiction with a population under 10,000 and the cabinet has established a phasing schedule under 40 C.F.R. 123.35(d)(3) (see subsection (8)(c)1 of this section), or~~

~~2. Within 180 days of notice, unless the cabinet grants a later date, if designated under subsection (7)(a)2 of this section (see subsection (8)(c)2 of this section).~~

~~(f) For any storm water discharge associated with small construction activity identified in 401 KAR 5:002, Section 1 (see subsection (4) of this section). Discharges from these sources shall require permit authorization by March 10, 2003, unless designated for coverage before then.~~

~~(g) A permit application shall be submitted to the cabinet within 180 days of notice, unless permission for a later date is granted by the cabinet for:~~

~~1. A storm water discharge which either the cabinet or the EPA Regional Administrator determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Commonwealth (see subsection (1)(a)5 of this section and 401 KAR 5:002, Section 1(290)(b)); or~~

~~2. A storm water discharge subject to subsection (2)(a)5 of this section.~~

~~(h) Facilities with existing KPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted in accordance with the requirements of Section 2 of this administrative regulation and subsection (2) of this section 180 days before the expiration of the permits.~~

~~(5) Petitions.~~

~~(a) Any owner or operator of a municipal separate storm sewer system may petition the cabinet to require a separate KPDES permit for any discharge into the municipal separate storm sewer system.~~

~~(b) Any person may petition the cabinet to require a KPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Commonwealth.~~

~~(c) The owner or operator of a municipal separate storm sewer system may petition the cabinet to reduce the census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 401 KAR 5:002, Section 1(55), that is treated in a publicly owned treatment works. In municipalities or regional authorities in which combined sewers are operated, the census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers if an applicant has submitted the KPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.~~

~~(d) Any person may petition the cabinet for the designation of a large, medium or small municipal separate storm sewer system as defined in 401 KAR 5:002.~~

~~(e) The cabinet shall make a final determination on any petition received under this section within ninety (90) days after receiving~~

~~the petition with the exception of petitions to designate a small MS4 in which case the cabinet shall make a final determination on the petition within 180 days after its receipt.~~

~~(6) Conditional exclusion for "no exposure" of industrial activities and materials to storm water. Discharges composed entirely of storm water shall not be storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt, or runoff, and the discharger satisfies the conditions in paragraphs (a) through (d) of this subsection. "No exposure" occurs if all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff. Industrial materials or activities shall include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities shall include, but are not limited to, the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.~~

~~(a) Qualification. To qualify for this exclusion, the operator of the discharge shall:~~

~~1. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snowmelt, and runoff;~~

~~2. Complete and sign, according to Section 9 of this administrative regulation, a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (b) of this subsection;~~

~~3. Submit the signed certification to the cabinet once every five (5) years;~~

~~4. Allow the cabinet to inspect the facility to determine compliance with the "no exposure" conditions;~~

~~5. Allow the cabinet to make any "no exposure" inspection reports available to the public upon request; and~~

~~6. For facilities that discharge through an MS4, upon request, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.~~

~~(b) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter shall not be required for:~~

~~1. Drums, barrels, tanks, and similar containers that are tightly sealed, if these containers are not deteriorated, do not leak, and are banded or otherwise secured and without operational taps or valves;~~

~~2. Adequately maintained vehicles used in material handling; and~~

~~3. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).~~

~~(c) Limitations.~~

~~1. Storm water discharges from construction activities defined in 401 KAR 5:002, Section 1, shall not be eligible for this conditional exclusion.~~

~~2. This conditional exclusion from the requirement for a KPDES permit shall be available on a facility wide basis only, and shall not be available for individual outfalls. If a facility has some discharges of storm water that would otherwise be "no exposure" discharges, individual permit requirements shall be adjusted accordingly.~~

~~3. If circumstances change and industrial materials or activities become exposed to rain, snow, snowmelt, or runoff, the conditions for this exclusion shall not apply any longer. If that occurs, the discharge shall become subject to enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances shall apply for and obtain permit authorization prior to the change of circumstances.~~

~~4. Notwithstanding the provisions of this paragraph, the cabinet shall retain the authority to require permit authorization and deny this exclusion if the cabinet determines that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.~~

~~(d) Certification. The no exposure certification shall require the submission of the following information, at a minimum, to aid the cabinet in determining if the facility qualifies for the no exposure exclusion:~~

~~1. The legal name, address and phone number of the discharger, see Section 1(3) of this administrative regulation;~~

~~2. The facility name and address, the county name and the latitude and longitude where the facility is located;~~

~~3. The certification shall indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:~~

~~a. Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;~~

~~b. Materials or residuals on the ground or in storm water inlets from spills/leaks;~~

~~c. Materials or products from past industrial activity;~~

~~d. Material handling equipment, except adequately maintained vehicles;~~

~~e. Materials or products during loading/unloading or transporting activities;~~

~~f. Materials or products stored outdoors, except final products intended for outside use, e.g., new cars, if exposure to storm water does not result in the discharge of pollutants;~~

~~g. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;~~

~~h. Materials or products handled/stored on roads or railways owned or maintained by the discharger;~~

~~i. Waste material, except waste in covered, nonleaking containers, e.g., dumpsters;~~

~~j. Application or disposal of process wastewater, unless otherwise permitted; and~~

~~k. Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;~~

~~4. All "no exposure" certifications shall include the following certification statement, and be signed in accordance with the signatory requirements of Section 9 of this administrative regulation. "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from KPDES storm water permitting, and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document, except as allowed under paragraph (b) of this subsection. I understand that I am obligated to submit a no exposure certification form once every five years to the cabinet and, if requested, to the operator of the local MS4 into which this facility discharge, where applicable. I understand that I shall allow the cabinet, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I shall obtain coverage under an KPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."~~

~~(7) Regulated small MS4.~~

~~(a) Unless qualifying for a waiver under paragraph (c) of this subsection, an operator of a small MS4 shall be regulated, including but not limited to systems operated by federal, state, and local governments, including state departments of transportation; and:~~

~~1. The small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area shall be regulated; or~~

~~2. Designated by the cabinet, including where the designation is pursuant to 40 C.F.R. 123.35(b)(3) and (b)(4), or is based upon a petition under subsection (5) of this section.~~

~~(b) Subject of a petition to the cabinet to require an KPDES permit for discharge of storm water. If the cabinet determines a permit is needed, then subsections (7) through (10) of this section shall apply.~~

~~(c) The cabinet may waive the requirements otherwise applicable in accordance with paragraph (d) or (e) of this subsection. A waiver under this section may subsequently require coverage under a KPDES permit in accordance with subsection (8)(a) of this section, if circumstances change, see also 40 C.F.R. 123.35(b).~~

~~(d) The cabinet may waive permit coverage if the MS4 serves a population of less than 1,000 within the urbanized area and meets the following criteria.~~

~~1. The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the KPDES storm water program, see 40 C.F.R. 123.35(b)(4); and~~

~~2. The system discharges any pollutant(s) that have been identified as a cause of impairment of any water body receiving the discharge, storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern.~~

~~(e) The cabinet may waive permit coverage if the MS4 serves a population under 10,000 and meets the following criteria:~~

~~1. The cabinet has evaluated all waters of the Commonwealth, including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4;~~

~~2. For those waters, the cabinet has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutant(s) of concern;~~

~~3. For the purpose of this paragraph, the pollutant(s) of concern shall include, but are not limited to, biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment such as total suspended solids, turbidity or siltation, pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4; and~~

~~4. The cabinet has determined that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.~~

~~(8) Application requirements for small MS4.~~

~~(a) Operators of a regulated small MS4 under subsection (7) of this section shall seek coverage under a KPDES permit issued by the cabinet.~~

~~(b) Authorization to discharge shall be under a general or individual KPDES permit, as follows:~~

~~1. For a general permit issued by the cabinet applicable to the discharge, the applicant shall submit a Notice of Intent (NOI) that includes the information on best management practices and measurable goals required by subsection (9)(d)1 of this section. An individual NOI, or joint NOI with other municipalities or governmental entities, shall be submitted. Shared responsibilities for meeting the minimum measures with other municipalities or governmental entities, shall be indicated on the NOI describing which minimum measures shall be implemented by each within the area served by the MS4. Coverage as a copermittee under a general permit by means of a joint Notice of Intent, shall require each MS4 to be subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in each respective jurisdiction except as set forth in subsection (10)(b) of this section.~~

~~2.a. Authorization to discharge under an individual permit to implement a program under subsection (9) of this section, shall require submittal of an application to the cabinet that includes the information required under Section 1(7) of this administrative regulation and subsection (9)(d) of this section, an estimate of square mileage served by the small MS4, and any additional information that the cabinet requests. A storm sewer map that satisfies the requirement of subsection(9)(b)3 of this section shall satisfy the map requirement in Section 1(7)(f) of this administrative regulation.~~

~~b. Authorization to discharge under an individual permit to implement a program that is different from the program under subsection (9) of this section, shall require compliance with the permit application requirements of subsection (3) of this section. Both parts of the application requirements in subsection (3)(a) and (b) of this section shall be submitted by March 10, 2003. Information required by subsection (3)(a)2 and (b)1 of this section regarding legal authority shall not be required, unless the small MS4 intends for the permit writer to take that information into account when developing the other permit conditions.~~

~~c. If allowed by the cabinet, multiple entities may jointly apply under either paragraph (b)2a or b of this subsection to be copermittees under an individual permit. Coverage as a copermittee under an individual permit by means of a joint notice of intent shall require each MS4 to be subject to the enforcement actions and penalties for the failure to comply with the terms of the permit in each respective jurisdiction except as set forth in subsection (10)(b) of this section.~~

~~3. If a small MS4 is in the same urbanized area as a medium or large MS4 with a KPDES storm water permit and that other MS4 is willing to have the small MS4 participate in its storm water program, the entities may jointly seek a modification of the other MS4 permit to include the small MS4 as a limited copermittee. As a limited copermittee, the small MS4 shall be responsible for compliance with the permit's conditions applicable to its jurisdiction. Choice of this option shall require compliance with the permit application requirements of subsection (1), rather than the requirements of subsection (9) of this section. Compliance with the specific application requirements of subsection (3)(a)3 and 4 and (b)3 of this section (discharge characterization) shall not be required. The small MS4 may satisfy the requirements in subsection (3)(a)5 and (b)4 of this section (identification of a management program) by referring to the other MS4's storm water management program.~~

~~(c) Operation of a regulated small MS4:~~

~~1. Designated under subsection (7)(a)1 of this section, shall require coverage under a KPDES permit, or application for a modification of an existing KPDES permit under paragraph (b)3 of this subsection by March 10, 2003, unless the MS4 serves a jurisdiction with a population under 10,000 and the cabinet has established a phasing schedule under 40 C.F.R. 123.35(d)(3).~~

~~2. Designated under subsection (7)(a)2 of this section, shall require coverage under an KPDES permit, or application for a modification of an existing KPDES permit under paragraph (b)3 of this subsection, within 180 days of notice, unless the cabinet grants a later date.~~

~~(9) Permit requirements for small MS4. The KPDES MS4 permit shall require at a minimum the MS4:~~

~~(a) To develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The storm water management program shall include the minimum control measures described in paragraph (b) of this subsection unless the MS4 applies for a permit under subsection (3) of this section. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) may generally be the most appropriate form of effluent limitations if designed to satisfy technology requirements, including reductions of pollutants to the maximum extent practicable and to protect water quality. Implementation of best management practices consistent with the provisions of the storm water management program required pursuant to this section and the provisions of the permit required pursuant to subsection (8) of this section shall constitute compliance with the standard of reducing pollutants to the "maximum extent practicable." The cabinet shall specify a time period of up to five (5) years from the date of permit issuance for the MS4 to develop and implement the program.~~

~~(b) Minimum control measures:~~

~~1. Public education and outreach on storm water impacts. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm~~

~~water runoff.~~

~~2. Public involvement/participation. At a minimum, comply with state, and local public notice requirements when implementing a public involvement/ participation program.~~

~~3. Illicit discharge detection and elimination. Develop, implement and enforce a program to detect and eliminate illicit discharges as defined in 401 KAR 5:002 Section 1 into the small MS4 to include:~~

~~a. A storm sewer system map, showing the location of all outfalls and the names and location of all waters of the Commonwealth that receive discharges from those outfalls;~~

~~b. To the extent allowable under state, or local law, effectively prohibit, through ordinance, or other regulatory mechanism, nonstorm water discharges into the storm sewer system and implement appropriate enforcement procedures and actions;~~

~~c. Develop and implement a plan to detect and address nonstorm water discharges, including illegal dumping, to the system;~~

~~d. Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste; and~~

~~e. Address the following categories of nonstorm water discharges or flows, i.e., illicit discharges only if identified as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration as defined at 40 C.F.R. 35.2005(b)(20), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water discharges or flows from fire fighting activities. These activities shall be excluded from the effective prohibition against nonstorm water and shall only be addressed if they are identified as significant sources of pollutants to waters of the Commonwealth.~~

~~4. Construction site storm water runoff control.~~

~~a. Develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one (1) acre. Reduction of storm water discharges from construction activity disturbing less than one (1) acre shall be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one (1) acre or more. If the cabinet waives requirements for storm water discharges associated with small construction activity, the small MS4 shall not be required to develop, implement, or enforce a program to reduce pollutant discharges from those sites.~~

~~b. The program shall include the development and implementation of, at a minimum:~~

~~(i) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state or local law;~~

~~(ii) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;~~

~~(iii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;~~

~~(iv) Procedures for site plan review which incorporate consideration of potential water quality impacts;~~

~~(v) Procedures for receipt and consideration of information submitted by the public; and~~

~~(vi) Procedures for site inspection and enforcement of control measures.~~

~~5. Postconstruction storm water management in new development and redevelopment.~~

~~a. Develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one (1) acre, including projects less than one (1) acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program shall ensure that controls are in place that would prevent or minimize water quality impacts;~~

~~b. Develop and implement strategies which include a combination of structural or nonstructural best management practices (BMPs) appropriate for the community;~~

~~c. Use an ordinance or other regulatory mechanism to address postconstruction runoff from new development and redevelopment projects to the extent allowable under state or local law; and~~

~~d. Ensure adequate long term operation and maintenance of BMPs.~~

~~6. Pollution prevention/good housekeeping for municipal operations.~~

~~a. The small MS4 shall develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, or other organizations, the program shall include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.~~

~~(c) If an existing qualifying local program requires the implementation of one (1) or more of the minimum control measures of paragraph (b) of this subsection, the cabinet may include conditions in the KPDES permit that direct the small MS4 to follow that qualifying program's requirements rather than the requirements of paragraph (b) of this subsection. A qualifying local program shall be a local or state municipal storm water management program that imposes, at a minimum, the relevant requirements of paragraph (b) of this subsection.~~

~~(d)1. In the permit application, either a notice of intent for coverage under a general permit or an individual permit application, the small MS4 shall identify and submit to the cabinet the following information:~~

~~a. The BMPs that the small MS4 or another entity will implement for each of the storm water minimum control measures at paragraphs (b)1 through 6 of this subsection;~~

~~b. The measurable goals for each of the BMPs including, as appropriate, the months and years in which the responsible party will undertake required actions, including interim milestones and the frequency of the action; and~~

~~c. The person or persons responsible for implementing or coordinating the storm water management program.~~

~~2. If covered under a general permit, the small MS4 shall not be required to meet any measurable goal(s) identified in the notice of intent in order to demonstrate compliance with the minimum control measures in paragraph (b)3 through 6 of this subsection unless, prior to submitting the NOI, EPA or the state has provided or issued a menu of BMPs that addresses each minimum measure. Even if no regulatory authority issues the menu of BMPs, the small MS4 shall comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.~~

~~(e) The small MS4 shall comply with any more stringent effluent limitations in the permit, including permit requirements that modify, or are in addition to, the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The cabinet may include more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.~~

~~(f) The small MS4 shall comply with other applicable KPDES permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of 401 KAR 5:065 and 5:070, as appropriate.~~

~~(g) Evaluation and assessment.~~

~~1. Evaluation. The small MS4 shall evaluate program compliance, the appropriateness of identified best management practices, and progress towards achieving identified measurable goals. The cabinet may determine monitoring requirements in accordance with state monitoring plans appropriate to a watershed.~~

~~2. Recordkeeping. The small MS4 shall keep records required by the KPDES permit for at least three (3) years. Records shall be submitted to the cabinet only if specifically asked to do so. Records, including a description of the storm water management program, shall be made available to the public at reasonable times during regular business hours, see 400 KAR 1:060 for confidentiali-~~

~~ty provision.~~

~~3. Reporting. Unless relying on another entity to satisfy the KPDES permit obligations under subsection (10)(a) of this section, the small MS4 shall submit annual reports to the cabinet for the first permit term. For subsequent permit terms, reports shall be submitted in year two (2) and four (4) unless the cabinet requires more frequent reports. The report shall include:~~

~~a. The status of compliance with permit conditions, an assessment of the appropriateness of identified best management practices and progress towards achieving identified measurable goals for each of the minimum control measures;~~

~~b. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;~~

~~c. A summary of the storm water activities planned during the next reporting cycle;~~

~~d. A change in any identified best management practices or measurable goals for any of the minimum control measures; and~~

~~e. Notice of reliance on another governmental entity to satisfy some of the permit obligations, if applicable.~~

~~(10) Shared responsibilities for minimum control measures.~~

~~(a) The small MS4 may rely on another entity to satisfy the KPDES permit obligations to implement a minimum control measure if:~~

~~1. The other entity, in fact, implements the control measure;~~

~~2. The particular control measure, or component thereof, is at least as stringent as the corresponding KPDES permit requirement; and~~

~~3. The other entity agrees to implement the control measure on the small MS4 behalf. In the reports submitted under subsection (9)(g)3 of this section, the small MS4 shall also specify reliance on another entity to satisfy some of the permit obligations. If relying on another governmental entity regulated under this section to satisfy all of the permit obligations, including the obligation to file periodic reports required by subsection (9)(g)3 of this section, that fact shall be noted in the NOI and the small MS4 shall not be required to file the periodic reports. The small MS4 shall remain responsible for compliance with the permit obligations if the other entity fails to implement the control measure (or component thereof).~~

~~(b) In some cases, the cabinet may recognize, either in the individual KPDES permit or in an KPDES general permit, that another governmental entity is responsible under an KPDES permit for implementing one (1) or more of the minimum control measures for the small MS4 or that the cabinet itself is responsible. If the cabinet does so, the small MS4 shall not be required to include minimum control measure(s) in the storm water management program. For example, if a state is subject to an KPDES permit that requires it to administer a program to control construction site runoff at the state level and that program satisfies all of the requirements of subsection (9)(b)4 of this section, the small MS4 could avoid responsibility for the construction measure, but would be responsible for the remaining minimum control measures. The permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.~~

~~Section 13. Silvicultural Activities. Permit requirement. Silvicultural point sources, as defined in 401 KAR 5:002, are point sources subject to the KPDES permit program.~~

~~Section 14. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are published by the Office of the Federal Register, National Archives and Government Services, General Services Administration, and are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky. Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~

~~(1) 40 C.F.R. 35.2005(b)(20), "Grants for Construction of Treatment Works, Definitions, Infiltration", revised as of July 1, 2001;~~

~~(2) 40 C.F.R. 110.6, "Discharge of Oil, Notice Requirements", revised as of July 1, 2001;~~

~~(3) 40 C.F.R. 117.21, "Notice of Discharge of Reportable Quantity", revised as of July 1, 2001;~~

~~(4) 40 C.F.R. 122, "National Pollutant Discharge Elimination System", revised as of July 1, 2001;~~

~~(5) 40 C.F.R. 123.35, "Regulation of Small Municipal Separate Storm Sewer Systems", revised as of July 1, 2001;~~

~~(6) 40 C.F.R. Part 136, "Guidelines Establishing Test Procedures for the Analyses of Pollutant", revised as of July 1, 2001;~~

~~(7) 40 C.F.R. Part 261, "Identification and Listing of Hazardous Waste", revised as of July 1, 2001;~~

~~(8) 40 C.F.R. 262.34, "Hazardous Waste, Pre-transport Requirements, Accumulation Time", revised as of July 1, 2001;~~

~~(9) 40 C.F.R. 302.6, "Designation, Reportable Quantities and Notification, Notification Requirements", revised as of July 1, 2001;~~

~~(10) 40 C.F.R. Part 355, Appendix A, "The List of Extremely Hazardous Substances", revised as of July 1, 2001, and~~

~~(11) 40 C.F.R. Chapter I, Subchapter N, Part 401 et seq., "Federal Effluent Limitations and Standards and New Source Performance Standards", revised as of July 1, 2001.~~

~~Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) KPDES Form 1, DEP 7032, revised February 2002;~~

~~(b) KPDES Form A, DEP 7032A, revised February 2002;~~

~~(c) KPDES Form B, DEP 7032B, revised February 2002;~~

~~(d) KPDES Form C, DEP 7032C, revised February 2002;~~

~~(e) KPDES Short Form C, DEP 7032SC, revised February 2002, and~~

~~(f) KPDES Form F, DEP 7032F, revised February 2002.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the KPDES Branch at the Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

LEONARD K. PETERS, Secretary

FILED WITH LRC: April 14, 2009 at 9 a.m.

APPROVED BY AGENCY: April 13, 2009

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2009 at 10 a.m. at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2009, 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 June 1, 2009. 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. Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter T. Goodmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application requirements for all KPDES permits and contains additional requirements for general and specific categories of dischargers.

(b) The necessity of this administrative regulation: This regulation provides specific requirements for permitting discharges into waters of the Commonwealth. All NPDES delegated states must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny under

such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes the cabinet to issue federal permits pursuant to 33 U S.C. Section 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq. subject to the conditions imposed in 33 U.S.C. Sections 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific requirements for several categories of permits, furthermore, the regulation references specific documents and governing federal regulations relevant to the permitting process.

(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 will correct and update the regulation to make it consistent with the corresponding federal regulations. The proposed amendment affects six permit application forms incorporated by reference in the existing regulation. These six forms are Form 1, Form A, Form B, Form C, Form SC, and Form F. The amendment references the most recent edition of the forms. This amendment adds two forms: Form NE, and Form NDCAFO. This amendment also revises ambiguous terms in accordance with KRS 13A and provides federal citations and strikes the federal language reproduced in the body of the state administrative regulation. This amendment will also require Concentrated Animal Feeding Operations (CAFOs) to submit a nutrient management plan as part of a KPDES permit application.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to achieve compliance with federal regulations If the administrative regulation is not amended as proposed, it will continue to be inconsistent with the corresponding federal regulations The amendment includes, by reference, the forms revised to comply with federal regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. The proposed amendment continues to provide for water pollution control as provided in KRS Chapter 224.

(d) How the amendment will assist in the effective administration of the statutes: The amendment removes discrepancies between current state and federal regulations. The amendment will aid in carrying out the goals of KRS Chapter 224.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This regulation affects over 10,000 existing permitted entities including individuals, businesses and governmental organizations. The amendment is expected to impact the following number of entities:

a. Individuals: None. Individual family residences do not file the forms referenced in this regulation.

b. Businesses: 1600 per year, primarily through industrial permits, non-public entity sanitary wastewater permits, and stormwater coverage issuances.

c. Organizations: 100 per year, primarily through individual sanitary permits issued to non-public organizations such as churches, summer camps, and private social or sporting clubs.

d. State or Local Government. 30 per year, primarily through permits for Public-Owned Treatment Works (POTWs).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will have to submit a revised version of an application form that they currently submit.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Under this regulation, individuals, businesses, and organizations are not expected to experience any additional cost. Because these requirements are already in federal requirements, amending this regulation for consistency with federal regulations will create no additional economic burden upon affected entities. Concentrated Animal Farming Operations were required to create a nutrient management plan prior to this amendment, therefore, submittal of the plan as part of an application should be an insignificant additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and the updated federal regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. This amendment does not change any source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are expected to support this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees
This amendment does not directly or indirectly affect fees.

(9) TIERING: Is tiering applied? Permit requirements are tiered based upon the nature and size of the wastewater discharge

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Clean Water Act and KRS Chapter 224

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation is expected to affect approximately thirty state or local government agencies per year as wastewater permits are issued or re-issued. Because these requirements are already in federal regulations, amending this regulation for consistency with federal regulations will create no additional economic burden upon state or local agencies.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to impact revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

Note If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 122 and 33 U.S C. 1251-1387.

2. State compliance standards. KRS 224.16-050

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U.S C. 1251-1387).

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 5:065. KPDES permit conditions.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.18-100, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 122, 129, 136,[~~Chapter I, Subchapter N,~~] 401-471[~~et seq.~~], 503, 33 U.S.C. 1251 - 1387, EO 2008-507, 2008-531[~~et seq.~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, 40 C.F.R. 122, 129, 136, [~~Chapter I, Subchapter N~~] 401-471[~~seq.~~], 503, 33 U S C. 1251-1387, EO 2008-507, 2008-531[~~et seq., 1342~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the [~~Environmental and Public Protection~~] cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224.16-050 authorizes[~~further empowers~~] the cabinet to issue federal permits pursuant to 33 U S.C.[~~Section~~] 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C [~~Section~~] 1251-1387[~~et seq.~~] subject to the conditions imposed in 33 U S C. [~~Sections~~] 1342(b) and (d) and that any exemptions granted shall be pursuant to the Federal Water Pollution Control Act, 33 U S C. 1251 – 1387. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environmental Cabinet. This administrative regulation establishes[~~sets forth~~] the conditions applicable to all a KPDES permit[~~KPDES permits~~] and the procedures for establishing and calculating permit conditions.

Section 1. Definitions Definitions established in 40 C F.R. 122.2 shall apply for the interpretation of federal regulations that are cited within this administrative regulation.

Section 2. Federal Regulations A KPDES permit limitation, standard, or condition shall be as established in: 40 C F.R. 122 41, 122.42,122.43,122.44, 122 45, 122 Appendix A, 129, 136, 401 - 471, and 503.

Section 3. Substitutions, Exceptions, and Additions to Cited Federal Regulations.

(1) "Waters of the Commonwealth" shall be substituted for "Waters of the United States" in the federal regulations cited in Section 2 of this administrative regulation

(2) "Cabinet" shall be substituted for "Director" if the cabinet has delegated authority to implement the federal regulations cited in Section 2 of this administrative regulation.

(3) "KPDES" shall be substituted for "NPDES" if the cabinet has delegated authority to implement a federal regulation cited in Section 2 of this administrative regulation

(4) The penalties established in KRS 224 99-010 shall be substitutes for the penalties established in 40 C.F.R. 122.41(a)(2).

(5) In addition to applicable requirements for state permits established in 40 C F.R 122 43(b)(1), the requirements of interstate agencies shall be applied to permits issued by the cabinet [~~Conditions Applicable to all KPDES Permits. All conditions applicable to KPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these administrative regulations shall be given in the permit. In addition to conditions required in all KPDES permits, the cabinet shall establish conditions as required on a case-by-case basis under Section 2 of this administrative regulation and 401 KAR 5 070.~~

~~(1) Duty to comply.~~

~~(a) General requirement. The permittee shall comply with all conditions of this permit. Any permit noncompliance shall constitute a violation of KRS Chapter 224, among which shall be the following remedies: enforcement action, permit revocation, revocation and reissuance, or modification, or denial of a permit renewal application.~~

~~(b) Specific duties.~~

~~1. The permittee shall comply with effluent standards or prohibitions established under 40 C.F R. Part 129 as of July 1, 2001, as adopted without change, within the time provided in the federal regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.~~

~~2. Any person who violates a permit condition as set forth in the KPDES administrative regulations shall be subject to penalties under KRS 224.99 010(1) and (4).~~

~~(2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit as required in 401 KAR 5.060, Section 1.~~

~~(3) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.~~

~~(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.~~

~~(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also shall include adequate laboratory controls, and appropriate quality assurance procedures. This provision shall require the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only if the operation is necessary to achieve compliance with the conditions of the permit.~~

~~(6) Permit actions. The permit may be modified, revoked and reissued, or revoked for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, shall not stay any permit condition.~~

~~(7) Property rights. This permit shall not convey any property rights of any kind, or any exclusive privilege.~~

~~(8) Duty to provide information. The permittee shall furnish to the cabinet, within a reasonable time, any information which the cabinet may request to determine whether cause exists for modifying, revoking and reissuing, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the cabinet, upon request, copies of records required to be kept by this permit.~~

~~(9) Inspection and entry. The permittee shall allow the cabinet, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:~~

~~(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records pertinent to the KPDES program are or may be kept;~~

~~(b) Have access to and copy, at reasonable times, any records that are required to be be kept under the conditions of this permit,~~

~~(c) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under this permit; and~~

~~(d) Sample or monitor at reasonable times, for the purposes of assuring KPDES program compliance or as otherwise authorized by KRS Chapter 224, any substances or parameters at any location.~~

~~(10) Monitoring and records.~~

~~(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.~~

~~(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the cabinet at any time.~~

~~(c) Records of monitoring information shall include:~~

~~1. The date, exact place, and time of sampling or measurements;~~

~~2. The individuals who performed the sampling or measurements;~~

~~3. The dates analyses were performed;~~

~~4. The individuals who performed the analyses;~~

~~5. The analytical techniques or methods used, and~~

~~6. The results of the analyses.~~

~~(d) Monitoring shall be conducted according to test procedures approved under 40 C.F.R. Part 136, unless other test procedures have been specified in the permit.~~

~~(e) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit shall, upon conviction, be subject to penalties under KRS 224.99-010(4).~~

~~(11) Signatory requirement. All applications, reports, or information submitted to the cabinet shall be signed and certified as indicated in 401 KAR 5:060, Section 9. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.99-010(4).~~

~~(12) Reporting requirements.~~

~~(a) Planned changes. The permittee shall give notice to the cabinet as soon as possible of any planned physical alteration or additions to the permitted facility. Notice shall be required only if:~~

~~1. The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in 401 KAR 5:080, Section 5, or~~

~~2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification only applies to pollutants which are subject either to effluent limitations in the permit, or to notification requirements under 401 KAR 5:080, Section 5.~~

~~(b) Anticipated noncompliance. The permittee shall give advance notice to the cabinet of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.~~

~~(c) Transfers. The permit shall not be transferable to any person except after notice to the cabinet. The cabinet may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate other requirements as may be necessary under KRS Chapter 224.~~

~~(d) Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit. Monitoring results shall be reported as follows:~~

~~1. Monitoring results shall be reported on a Discharge Monitoring Report (DMR).~~

~~2. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 C.F.R. Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.~~

~~3. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the cabinet in the permit.~~

~~(e) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.~~

~~(f) Twenty-four (24) hour reporting. The permittee shall follow the provisions of 401 KAR 5:015 and shall orally report any noncompliance which may endanger health or the environment, within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. This report shall be in addition to and not in lieu of any other reporting requirement applicable to the noncompliance. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The cabinet may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours. The following shall be included as events which shall be reported within twenty-four (24) hours:~~

~~1. Any unanticipated bypass which exceeds any effluent limitation in the permit, as indicated in subsection (13) of this section.~~

~~2. Any upset which exceeds any effluent limitation in the permit.~~

~~3. Violation of a maximum daily discharge limitation for any of the pollutants listed by the cabinet in the permit to be reported within twenty-four (24) hours, as indicated in Section 2(7) of this administrative regulation.~~

~~(g) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (d), (e), and (f) of this subsection, when monitoring reports are submitted. The reports shall contain the information listed in paragraph (f) of this subsection.~~

~~(h) Other information. Where the permittee becomes aware that it failed to submit any relevant fact in a permit application, or submitted incorrect information in a permit application or in any report to the cabinet, it shall promptly submit those facts or information.~~

~~(13) Occurrence of a bypass.~~

~~(a) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. This type of bypass shall not be subject to the provisions of paragraphs (b) and (c) of this subsection.~~

~~(b) Notice.~~

~~1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 4.~~

~~2. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subsection (12)(f) of this section, twenty-four (24) hour notice. Compliance with this requirement constitutes compliance with 401 KAR 5:015, Section 4.~~

~~(c) Prohibition of a bypass.~~

~~1. Bypassing shall be prohibited, and the cabinet may take enforcement action against a permittee for bypass, unless:~~

~~a. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;~~

~~b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition shall not be satisfied if adequate back up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and~~

~~c. The permittee submitted notices as required under paragraph (b) of this subsection.~~

~~2. The cabinet may approve an anticipated bypass, after considering its adverse effects, if the cabinet determines that it will~~

~~meet the three (3) conditions listed in subparagraph 1a, b, and c of this paragraph.~~

~~(14) Occurrence of an upset.~~

~~(a) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of paragraph (b) of this subsection are met.~~

~~(b) Conditions necessary for a demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:~~

~~1. An upset occurred and that the permittee can identify the causes of the upset;~~

~~2. The permitted facility was at the time being properly operated;~~

~~3. The permittee submitted notice of the upset as required in subsection (12)(f) of this section, and~~

~~4. The permittee complied with any remedial measures required under subsection (4) of this section.~~

~~(c) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset shall have the burden of proof.~~

~~(15) Additional conditions applicable to specified categories of KPDES permits. The following conditions, in addition to others set forth in this administrative regulation, shall apply to all KPDES permits within the categories specified below:~~

~~(a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under subsections (12), (13), and (14) of this section, any existing manufacturing, commercial, mining, and silvicultural discharger shall notify the cabinet as soon as it knows or has reason to know:~~

~~1. That any activity has occurred or will occur which would result in the discharge on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"~~

~~a. 100 micrograms per liter (100 µg/l);~~

~~b. 200 micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter (1 mg/1) for antimony;~~

~~c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 2(7);~~

~~d. The level established by the cabinet in accordance with Section 2(6) of this administrative regulation.~~

~~2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"~~

~~a. 500 micrograms per liter (500 µg/l);~~

~~b. One (1) milligram per liter (1 mg/l) for antimony;~~

~~c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 401 KAR 5:060, Section 2(7); or~~

~~d. The level established by the cabinet in accordance with Section 2(6) of this administrative regulation.~~

~~(b) POTWs.~~

~~1. POTWs shall provide adequate notice to the cabinet of the following:~~

~~a. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to the KPDES administrative regulations if it were directly discharging those pollutants; or~~

~~b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.~~

~~2. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTWs and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.~~

~~Section 2. Establishing Permit Conditions. For the purpose of this section, permit conditions shall include any statutory or regulatory requirement which takes effect prior to the final administrative disposition of a permit. An applicable requirement may be any requirement which takes effect prior to the modification or revocation or reissuance of a permit, to the extent allowed in 401 KAR 5:070, Section 6. New or reissued permits, and to the extent allowed under 401 KAR 5:070, Section 6 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section. In addition to the conditions established under Section 1 of this administrative regulation each KPDES permit shall include conditions meeting the following requirements as applicable.~~

~~(1) Technology-based effluent limitations and standards; new source performance standards; and pretreatment requirements and standards, as required by 40 C.F.R. Chapter I, Subchapter N (Part 401 et seq.), adopted without change in Section 4 of this administrative regulation, or case-by-case effluent limitations and standards and pretreatment requirements or based on a combination of those standards in accordance with 401 KAR 5:080, Section 1(2) shall be included, as applicable. For new sources or new discharges, these technology-based limitations and standards shall be subject to the provisions of 401 KAR 5:080, Section 5(2)(a).~~

~~(2) Other effluent limitations and standards of KRS Chapter 224 shall be included as applicable. If any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in the effluent standard or prohibition, is promulgated by EPA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the cabinet shall institute proceedings under these administrative regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.~~

~~(3) Reopener clause. For any discharger within a primary industry category, as listed in Section 4(2) of this administrative regulation requirements under the KPDES administrative regulations shall be incorporated as applicable, as follows:~~

~~(a) On or before June 30, 1981:~~

~~1. If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that if an applicable standard or limitation is promulgated by EPA and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.~~

~~2. If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations.~~

~~(b) After June 30, 1981, any permit issued shall include effluent limitations and a compliance schedule to meet the applicable requirements indicated in Section 1(1)(b) of this administrative regulation, whether or not applicable effluent limitations guidelines have been promulgated or approved by EPA. These permits need not incorporate the reopener clause required by paragraph (a) of this subsection.~~

~~(c) The cabinet shall promptly modify or revoke and reissue any permit containing the clause required under paragraph (a) of this subsection to incorporate an applicable EPA effluent standard or limitation which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.~~

~~(4) Water quality standards and state requirements shall be included as applicable. Any requirements in addition to or more stringent than EPA's effluent limitations guidelines or standards shall be included, if necessary to:~~

~~(a) Achieve water quality standards established under KRS Chapter 224 and administrative regulations promulgated pursuant thereto, including any narrative criteria contained in 401 KAR 5:031.~~

~~1. Limitations shall control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the cabinet determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including narrative criteria for water quality.~~

~~2. If determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a water quality standard, the cabinet shall use procedures which account for existing~~

~~controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing, if evaluating whole effluent toxicity, and if appropriate, the dilution of the effluent in the receiving water.~~

~~3. If the cabinet determines, using the procedures in subparagraph 2 of this paragraph, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a numeric criteria within a water quality standard for an individual pollutant, the permit shall contain effluent limits for that pollutant.~~

~~4. If the cabinet determines, using the procedures in subparagraph 2 of this paragraph, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit shall contain effluent limits for whole effluent toxicity.~~

~~5. Except as provided in this subparagraph, if the cabinet determines, using the procedures in subparagraph 2 of this paragraph, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable water quality standard, the permit shall contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity shall not be necessary if the cabinet demonstrates in the fact sheet or statement of basis of the KPDES permit, using the procedures in subparagraph 2 of this paragraph, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative water quality standards.~~

~~6. If 401 KAR 5:031 does not specify a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable water quality standard, the cabinet shall establish effluent limits using one (1) or more of the following options:~~

~~a. Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the cabinet demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. The criterion may be derived using administrative regulation interpreting the narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, September 1993, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents, or~~

~~b. Establish effluent limits on a case-by-case basis, using water quality criteria listed in 401 KAR 5:031, supplemented if necessary by other relevant information, or~~

~~c. Establish effluent limitations on an indicator parameter for the pollutant of concern, if:~~

~~(i) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;~~

~~(ii) The fact sheet required by 401 KAR 5:075 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;~~

~~(iii) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and~~

~~(iv) The permit contains a reopener clause allowing the cabinet to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.~~

~~7. If developing water quality-based effluent limits under this paragraph the cabinet shall ensure that:~~

~~a. The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and~~

~~b. Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the cabinet;~~

~~(b) Attain or maintain a specified water quality through water quality related effluent limits established under Section 302 of the Clean Water Act, or CWA, 33 U.S.C. Section 1312;~~

~~(c) Conform to applicable water quality requirements if the discharge affects a state other than Kentucky;~~

~~(d) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or administrative regulations in accordance with Section 301(b)(1)(c) of CWA, 33 U.S.C. Section 1311(b)(1)c.~~

~~(e) Ensure consistency with the requirements of any Kentucky Water Quality Management Plan approved by EPA.~~

~~(f) Incorporate alternative effluent limitations or standards if warranted by "fundamentally different factors," under 401 KAR 5:080, Section 3.~~

~~(5) Toxic pollutants. Limitations established under subsections (1), (2) or (4) of this section, to control pollutants meeting the criteria listed in paragraph (a) of this subsection shall be included in the permit, if applicable. Limitations shall be established in accordance with paragraph (b) of this subsection. An explanation of the development of these limitations shall be included in the fact sheet under 401 KAR 5:075, Section 4.~~

~~(a) Limitations shall control all toxic pollutants which:~~

~~1. The cabinet determines, based on information reported in a permit application under 401 KAR 5:060, Section 2(7), or in a notification under Section 1(15)(a) of this administrative regulation or on other information, are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 401 KAR 5:080, Section 1(2)(c); or~~

~~2. The discharger does or may use or manufacture as an intermediate or final product or by-product.~~

~~(b) The requirement that the limitations control the pollutants meeting the criteria of paragraph (a) of this subsection shall be satisfied by:~~

~~1. Limitations on those pollutants; or~~

~~2. Limitations on other pollutants which, in the judgment of the cabinet, will provide treatment of the pollutants under paragraph (a) of this subsection to the levels required by 401 KAR 5:080, Section 1(2)(c).~~

~~(6) Notification level. A "notification level" which exceeds the notification level of Section 1(15)(a)1a, b, or c of this administrative regulation, upon a petition from the permittee or on the cabinet's initiative shall be incorporated as a permit condition, if applicable. This new notification level shall not exceed the level which can be achieved by the technology-based treatment requirements appropriated to the permittee under 401 KAR 5:080, Section 1(2)(c).~~

~~(7) Twenty-four (24) hour reporting. Pollutants for which the permittee shall report violations of maximum daily discharge limitations under Section 1(12)(f) of this administrative regulation (twenty-four (24) hour reporting) shall be listed as such in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.~~

~~(8) Monitoring requirements. The permit shall incorporate, as applicable in addition to Section 1(12) of this administrative regulation, the following monitoring requirements:~~

~~(a) To assure compliance with permit limitations, requirements to monitor:~~

~~1. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;~~

~~2. The volume of effluent discharged from each outfall; and~~

~~3. Other measurements as appropriate; including pollutants in internal waste streams under Section 3(8) of this administrative regulation; frequency, rate of discharge, etc., for noncontinuous discharges under Section 3(5) of this administrative regulation; and pollutants subject to notification requirements under Section 1(15)(a) of this administrative regulation.~~

~~(b) According to test procedures approved under 40 C.F.R. Part 136 for the analyses of pollutants having approved methods under the federal regulation, and according to a test procedure specified in the permit for pollutants with no approved methods.~~

~~(c) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but not less than once a year with the following exceptions:~~

~~1. Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case by case basis with a frequency dependent on the nature and effect of the discharge, but not less than once a year.~~

~~2. Requirements to report monitoring results for storm water discharges associated with industrial activity, other than those addressed in subparagraph 1 of this paragraph shall be established on a case by case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge shall require:~~

~~a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;~~

~~b. The discharger to maintain for a period of three (3) years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;~~

~~c. The report and certification be signed in accordance with 401 KAR 5:060, Section 9; and~~

~~d. Permits for storm water discharges associated with industrial activity from inactive mining operations may, if annual inspections are impracticable, require certification once every three (3) years by a professional engineer that the facility is in compliance with the permit, or alternative requirements.~~

~~3. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under Section 1(12)(g) of this administrative regulation at least annually.~~

~~(d) Monitoring waivers for certain guideline listed pollutants.~~

~~1. The cabinet may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an KPDES permit to forego sampling of a pollutant found at 40 C.F.R. Chapter I, Subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.~~

~~2. This waiver shall be good only for the term of the permit and shall not be available during the term of the first permit issued to a discharger.~~

~~3. Any request for this waiver shall be submitted when applying for a reissued permit or modification of a reissued permit. The request shall demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.~~

~~4. Any grant of the monitoring waiver shall be included in the permit as an express permit condition and the reasons supporting the grant shall be documented in the permit's fact sheet or statement of basis.~~

~~5. This provision shall not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards, 40 C.F.R. Chapter I, Subchapter N.~~

~~(9) Pretreatment program for POTWs. If applicable to the facility the permit shall incorporate as a permit condition requirements for POTWs to:~~

~~(a) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under the KPDES administrative regulations.~~

~~(b) Submit a local program if required by and in accordance with 401 KAR 5:057, to assure compliance with pretreatment standards to the extent applicable in the KPDES administrative regulations. The local program shall be incorporated into the permit as described in 401 KAR 5:057. The program shall require all indirect dischargers to the POTW to comply with the applicable reporting requirements.~~

~~(10) Best management practices shall be included as a permit condition, as applicable, to control or abate the discharge of pollutants if:~~

~~(a) Applicable under KRS Chapter 224 and the KPDES administrative regulations for the control of toxic pollutants and hazardous substances from ancillary activities;~~

~~(b) Numeric effluent limitations are infeasible;~~

~~(c) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of KRS Chapter 224, or~~

~~(d) Authorized under section 402(p) of the CWA, 33 U.S.C. 1342(p) for the control of storm water discharges.~~

~~(11) Qualifying state or local programs.~~

~~(a) For storm water discharges associated with small construction activity, as identified in 401 KAR 5:002, Section 1, the KPDES permit may include permit conditions that incorporate qualifying state or local erosion and sediment control program requirements by reference. If a qualifying state or local program does not include one (1) or more of the elements in this paragraph, then the KPDES shall include those elements as conditions in the permit. A qualifying state or local erosion and sediment control program shall be one that includes:~~

~~1. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;~~

~~2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality, and~~

~~3. Requirements for construction site operators to develop and implement a storm water pollution prevention plan. A storm water pollution prevention plan shall include site descriptions, descriptions of appropriate control measures, copies of approved state or local requirements, maintenance procedures, inspection procedures, and identification of nonstorm water discharges.~~

~~(b) For storm water discharges from construction activity, as identified in 401 KAR 5:002, Section 1, KPDES permit may include permit conditions that incorporate qualifying state or local erosion and sediment control program requirements by reference. A qualifying state or local erosion and sediment control program shall be one that includes the elements listed in paragraph (a) of this subsection and any additional requirements necessary to achieve "best available technology" and "best conventional technology" based on the best professional judgement of the permit writer.~~

~~(12) Reissued permits.~~

~~(a) The permit shall include a condition concerning reissued permits, as applicable. If a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as any final limitations, standards, or conditions in the previous permit shall be incorporated unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 401 KAR 5:070, Section 6.~~

~~(b) For effluent limitations established on the basis of 401 KAR 5:080, Section 1(2)(c)2, a permit shall not be renewed, revoked and reissued, or modified on the basis of effluent guidelines promulgated under CWA Section 304(b), 33 U.S.C. 1314(b), subsequent to the original issuance of the permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.~~

~~1. Exceptions. A permit to which paragraph (a) of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if:~~

~~a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;~~

~~b. Information is available which was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and which would have justified the application of a less stringent effluent limitation at the time of permit issuance;~~

~~c. The cabinet determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under 401 KAR 5:080, Section 1(2)(c)2;~~

~~d. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;~~

~~e. The permittee has received a permit modification under 401 KAR 5:055, Section 3; or~~

~~f. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. If this occurs, the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification.~~

~~2. Limitations. A permit to which paragraph (a) of this subsection applies shall not be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect when the permit is renewed, reissued, or modified. The permit to discharge into waters shall not be renewed, issued, or modified to contain less stringent effluent limitation if the implementation of the limitation would result in a violation of a water quality standard under 401 KAR 5:031 applicable to those waters.~~

~~(13) Privately owned treatment works. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited copermittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this administrative regulation shall be imposed as applicable. Alternatively, the cabinet may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The cabinet's decision to issue a permit with no conditions applicable to any user, to impose conditions on one (1) or more users, to issue separate permits or to require separate applications, and the basis for that decision shall be stated in the fact sheet for the draft permit for the treatment works.~~

~~(14) Grants or loans. Any conditions imposed in grants or loan made by the cabinet to POTWs which are reasonably necessary for the achievement of federally issued effluent limitations shall be required as applicable.~~

~~(15) Sewage sludge. Requirements shall be imposed, as applicable, governing the disposal of sewage sludge from publicly owned treatment works, in accordance with 40 C.F.R. Part 503.~~

~~(16) Coast Guard. If a permit is issued to a facility that may operate at certain times as a means of transportation over water, the permit shall be conditioned as applicable. A condition that the discharge shall comply with any applicable federal regulations promulgated by the secretary of the department in which the Coast Guard is operating which establish specifications for safe transportation, handling, carriage, and storage of pollutants shall be imposed if applicable.~~

~~(17) Navigation. Any conditions that the Secretary of the United States Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 401 KAR 5:075, Section 9, shall be included as applicable.~~

~~(18) Duration of permits shall be imposed, as set forth in 401 KAR 5:070, Section 1.~~

~~Section 3. Calculating KPDES Permit Conditions. The following provisions shall be used to calculate terms and conditions of the KPDES permit.~~

~~(1) Outfalls and discharge points. All permit effluent limitations, standards, and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided: under Section 2(10) of this administrative regulation; with BMPs if limitations are infeasible, and under subsection (8) of this section, limitations on internal waste streams.~~

~~(2) Production-based limitations.~~

~~(a) For POTWs, permit limitations, standards, or prohibitions shall be calculated based on design flow.~~

~~(b)1. Except in the case of POTWs or as provided in subparagraph 2a(ii) of this paragraph, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.~~

~~2.a.(i) The cabinet may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.~~

~~(ii) For the automotive manufacturing industry only, the cabinet may establish a condition under subparagraph 2a(i) of this paragraph if the applicant satisfactorily demonstrates to the cabinet at the time the application is submitted that its actual production, as indicated in subparagraph 2a(i) of this paragraph, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.~~

~~b. If the cabinet establishes permit conditions under subparagraph 2a(i) of this paragraph:~~

~~(i) The permit shall require the permittee to notify the cabinet at least two (2) business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one (1) month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels shall be required to cover a period or production level not covered by prior notice or, if during two (2) consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.~~

~~(ii) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the cabinet under subparagraph 2b of this paragraph, then the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.~~

~~(iii) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.~~

~~(3) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as described in 40 C.F.R. Part 136 unless:~~

~~(a) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form;~~

~~(b) In establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1(2), it is necessary to express the limitation on the metal in the dissolved or valent total form to carry out the provisions of KRS 224.16-050; or~~

~~(c) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).~~

~~(4) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, unless impracticable shall be stated as:~~

~~(a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and~~

~~(b) Average weekly and average monthly discharge limitations for POTWs.~~

~~(5) Noncontinuous discharges. Discharges which are not continuous, as defined in 401 KAR 5:002, Section 1, shall be particularly described and limited, considering the following factors, as appropriate:~~

~~(a) Frequency: for example, a batch discharge shall not occur more than once every three (3) weeks;~~

~~(b) Total mass: for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge;~~

~~(c) Maximum rate of discharge of pollutants during the discharge: for example, not to exceed two (2) kilograms of zinc per minute; and~~

~~(d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure: for example, shall not contain at any time more than one tenth (0.1) mg/l zinc or more than 250 grams (0.25 kilogram) of zinc in any discharge.~~

~~(6) Mass limitations.~~

~~(a) All pollutant limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:~~

~~1. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;~~

~~2. When applicable standards and limitations are expressed in terms of other units of measurement, or~~

~~3. If in establishing permit limitations on a case-by-case basis under 401 KAR 5:080, Section 1, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation, for example, discharges of TSS from certain mining operations, and permit conditions ensure that dilution will not be used as a substitute for treatment.~~

~~(b) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.~~

~~(7) Pollutants in intake water.~~

~~(a) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:~~

~~1. The applicable effluent limitations and standards contained in 40 C.F.R. Chapter I, Subchapter N, Part 401 et seq., specifically provide that they may be applied on a net basis; or~~

~~2. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.~~

~~(b) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) shall not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.~~

~~(c) Credit shall be granted only to the extent necessary to meet the applicable limitations or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.~~

~~(d) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The cabinet may waive this requirement if the cabinet finds that no environmental degradation will result.~~

~~(e) This subsection shall not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.~~

~~(8) Internal waste streams.~~

~~(a) If permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Section 2(8) of this administrative regulation shall also be applied to the internal waste streams.~~

~~(b) Limits on internal waste streams shall be imposed only if the fact sheet under 401 KAR 5:075, Section 4, sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, for example, under ten (10) meters of water, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.~~

~~(9) Disposal of pollutants into wells, into POTWs, or by land application. Permit limitations and standards shall be calculated as provided in 401 KAR 5:055, Section 6.~~

~~(10) Secondary treatment information. Permit conditions that involve secondary treatment shall be written as provided in 401 KAR 5:045.~~

~~Section 4. Primary Industry Categories. Any KPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the KPDES administrative regulations whether or not applicable effluent limitations guidelines have been promulgated.~~

~~(1) Adhesives and sealants.~~
~~(2) Aluminum forming.~~
~~(3) Auto and other laundries.~~
~~(4) Battery manufacturing.~~
~~(5) Coal mining.~~
~~(6) Coil coating.~~
~~(7) Copper forming.~~
~~(8) Electrical and electronic components.~~
~~(9) Electroplating.~~
~~(10) Explosives manufacturing.~~
~~(11) Foundries.~~
~~(12) Gum and wood chemicals.~~
~~(13) Inorganic chemicals manufacturing.~~
~~(14) Iron and steel manufacturing.~~
~~(15) Leather tanning and finishing.~~
~~(16) Mechanical products manufacturing.~~
~~(17) Nonferrous metals manufacturing.~~
~~(18) Ore mining.~~
~~(19) Organic chemicals manufacturing.~~
~~(20) Paint and ink formulation.~~
~~(21) Pesticides.~~
~~(22) Petroleum refining.~~
~~(23) Pharmaceutical preparations.~~
~~(24) Photographic equipment and supplies.~~
~~(25) Plastics processing.~~
~~(26) Plastic and synthetic materials manufacturing.~~
~~(27) Porcelain enameling.~~
~~(28) Printing and publishing.~~
~~(29) Pulp and paper mills.~~
~~(30) Rubber processing.~~
~~(31) Soap and detergent manufacturing.~~
~~(32) Steam electric power plants.~~
~~(33) Textile mills.~~
~~(34) Timber products processing.~~

~~Section 5. Federal Regulations Adopted Without Change. The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change. The federal regulations are published by the Office of the Federal Register, National Archives and Government Services, General Services Administration, and are available for inspection and copying, subject to copyright laws, during normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky. Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.~~

~~(1) Toxic Pollutant Effluent Standards, 40 C.F.R. Part 129, revised as of July 1, 2001;~~

~~(2) Test Procedures for the Analysis of Pollutants, 40 C.F.R. Part 136, revised as of July 1, 2001;~~

~~(3) Federal Effluent Limitations and Standards and New Source Performance Standards, 40 C.F.R. Chapter I, Subchapter N, revised as of July 1, 2001, and~~

~~(4) Standards for the Use or Disposal of Sewage Sludge, 40 C.F.R. Part 503, revised as of August 4, 1999.]~~

HENRY C.A. LIST, Deputy Secretary for
LEONARD K. PETERS, Secretary

FILED WITH LRC: April 14, 2009 at 9 a.m.

APPROVED BY AGENCY: April 13, 2009

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2009 at 10 a.m. at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2009, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to

comment on 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 June 1, 2009. 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. Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter T. Goodmann

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation sets forth the scope and applicability of the KPDES program including specific inclusions and exclusions, prohibitions, requirements for general permits, requirements for disposal into wells and into publicly-owned treat works (POTW) and disposal by land application.

(b) The necessity of this administrative regulation: KRS 224.16-050 (1) requires that any exemptions granted in the issuance of these permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a). Further, KRS 224.15-050(4) requires that the cabinet shall not impose under any permit issued pursuant to this administrative regulation an effluent limitation, monitoring requirement or other condition that is more stringent than the effluent limitation, monitoring requirement or other condition that would have been applicable under the federal regulation if the permit were issued by the federal government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 authorizes the cabinet to require for persons discharging into the waters of the Commonwealth, by administrative regulation, technological levels of treatment and effluent limitations. KRS 224 16-050(1) provides that the cabinet may issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C 1251-1387.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific bounds for the scope of the KPDES 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 will clarify that the cabinet must develop permit limitations to satisfy standards developed by interstate agencies. This amendment also revises ambiguous terms in accordance with KRS 13A and provides federal citations and strikes the federal language reproduced in the body of the state administrative regulation.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to clarify a debate of the legal requirement of including limitations developed by an interstate agency. This amendment makes it clear that such limitations are required.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-050, which authorizes the cabinet to implement the Federal Water Pollution Control Act. This amendment also conforms to KRS 224 18-100, which authorizes interstate environmental compacts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies that the cabinet has authority to impose permit requirement developed pursuant to an interstate agency standard. The amendment will aid in carrying out the goals of KRS Chapter 224. The cabinet also believes that citing federal regulations will allow future federal changes in regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This regulation affects over 10,000 existing permitted entities including individuals, businesses and governmental organizations. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

(a) Individuals: 100 per year for new permit issuances under the individual family residence permit. Renewal of these permits would average 300 per year. However, renewals of general permits occur as a batch once every 5 years.

(b) Businesses. 1600 per year, primarily through industrial permits, non-public entity sanitary wastewater permits, and stormwater coverage issuances.

(c) Organizations: 100 per year, primarily through individual sanitary permits issued to non-public organizations such as churches, summer camps, and private social or sporting clubs.

(d) State or Local Government: 30 per year, primarily through permits for Public-Owned Treatment Works (POTWs).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will have to comply with permit conditions and limitations that are pursuant to the standards of interstate agencies This change should cause very little additional impact. The cabinet's requirements are typically as stringent as those of the existing interstate agency (ORSANCO).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in question (3) should have an increased cost due to this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will not be confused by potential authority gaps arising between state and federal regulations as applied in interstate waters.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. There is no change in source of funding because of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are expected to support this amendment

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly affect fees.

(9) TIERING: Is tiering applied? This administrative regulation provides tiered requirements through the identification of classes of industrial users, specific requirements of POTWs, and requirements for specific categories of dischargers. Program requirements and limitations depend upon the size and the specific category of the user.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This regulation affects all units of state or local government that have a KPDES discharge permit. The proposed amendment affects only those who discharge into waters bordering other states.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Clean Water Act and KRS 224.

4 Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to generate additional state or local government revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not expected to generate additional state or local government revenue.

(c) How much will it cost to administer this program for the first year? There will be no change in cost.

(d) How much will it cost to administer this program for subsequent years? There will be no change in cost

Note. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

40 C.F.R. 122 and U S C. 1251-1387.

2. State compliance standards. KRS 224.16-050.

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as amended (33 U S C. 1251-1387).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No, the amendment to this regulation will not apply stricter standards than those required by the federal mandate. However, the existing language of the regulation applies to "Waters of the Commonwealth", which has a slightly different definition than "Waters of the United States." The Kentucky definition for "Waters of the Commonwealth", established in KRS 224.01-010(33) includes ground water, but the definition for "Waters of the United States" does not include ground water.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendment to this regulation will not apply stricter standards than those required by the federal mandate. However, the existing language of the regulation applies to "Waters of the Commonwealth", which has a slightly different definition than "Waters of the United States." The Kentucky definition for "Waters of the Commonwealth", established in KRS 224.01-010(33) includes ground water, but the definition for "Waters of the United States" does not include ground water.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amendment)

401 KAR 5:080. Criteria and standards for the Kentucky Pollutant Discharge Elimination System.

RELATES TO: KRS 224.10-100, 224.16-050, 224.18-760, 224.70-100, 224 70-110, 40 C F R 122 21, 122 29, 125 1, 125 2, 125 3, 125.10, 125.11, 125 31, 125 32, 125 70, 125 71, 125 72, 126 73, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224 16-050, 224.70-100, 224.70-110, 40 C.F.R, EO 2008-507, 2008-531

NECESSITY, FUNCTION, AND CONFORMITY. KRS 224.10-100 authorizes the [~~Environmental and Public Protection~~] cabinet to issue, continue in effect, revoke, modify, suspend or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth. KRS 224 16-050 authorizes[~~provides that~~] the cabinet to[~~may~~] issue federal permits pursuant to 33 U.S.C.[~~Section~~] 1342(b) of the Federal Water Pollution Control Act, [(]33 U.S.C.[~~Section~~] 1251-1387,[~~et seq.~~)] subject to the conditions imposed in 33 U.S.C.[~~Section~~] 1342(b) and (d)and[~~This section further provides~~] that an exemption[~~any exemptions~~] granted in the issuance of a KPDES permit[~~permits~~] shall be pursuant to 33 U.S.C.[~~Sections~~] 1311, 1312, and 1326(a). EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environmental Cabinet. This administrative regulation establishes[~~sets forth~~] the criteria and standards for the KPDES permitting system.

Section 1. Definitions. Definitions established in 40 C F R 122.2 shall apply for the interpretation of the federal regulations cited within this administrative regulation.

Section 2. Criteria and standards for technology-based treatment standards shall be as established in 40 C.F R. 125 1, 125 2, and 125 3.

Section 3. Criteria for issuance of permits to aquaculture projects shall be as established in 40 C F.R. 125 10 and 125 11.

Section 4. Criteria and standards for determining fundamentally different factors shall be as established in 40 C.F.R. 125.30, 125 31, and 125 32.

Section 5. Criteria for determining alternative effluent limitations for the control of a thermal component of a discharge shall be as established in 40 C.F.R. 125 70, 125 71, 125 72, and 125.73.

Section 6. Special KPDES program requirements related to new sources and new discharges shall be as established in 40 C F R 122 29.

Section 7 [~~Criteria and Standards for Technology-based Treatment Requirements. (1) Purpose and scope. This section establishes criteria and standards for the imposition of technology-based treatment requirements in KPDES permits, including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations.~~

~~(2) Compliance with technology-based treatment requirements in KPDES permits.~~

~~(a) General. Technology-based treatment requirements represent the minimum level of control that shall be imposed in a KPDES permit. Permits shall contain the following technology-based treatment requirements in accordance with the deadlines indicated herein:~~

~~1. For POTWs effluent limitations based upon:~~

~~a. Secondary treatment as required by CWA Section 301(b)(1)(B) (33 U.S.C. Section 1311(b)(1)(B)) from date of permit issuance, and~~

~~b. The best practicable waste treatment technology as required by CWA Section 301(b)(1)(A) (33 U S C. Section (b)(1)(A)) not later than July 1, 1983; and~~

~~2. For dischargers other than POTWs, except as otherwise provided in the KPDES administrative regulations, effluent limitations requiring:~~

~~a. The best practicable control technology currently available (BPT):~~

~~(i) For effluent limitations promulgated under CWA Section 304(b) after January 1, 1982 and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before this date, compliance as expeditiously as practicable but not later than three (3) years after the date the limitations are promulgated under CWA Section 304(b) and not later than March 31, 1989;~~

~~(ii) For effluent limitations established on a case-by-case basis based on best professional judgment (BPJ) under paragraph (c)2 of this subsection in a permit issued after February 4, 1987, compliance as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later~~

~~than March 31, 1989; or~~

~~(iii) For all other BPT effluent limitations compliance is required from the date of permit issuance.~~

~~b. For conventional pollutants, the best conventional pollutant control technology (BCT):~~

~~(i) For effluent limitations promulgated under CWA Section 304(b), as expeditiously as practicable but not later than three (3) years after the date the limitations are promulgated under CWA Section 304(b), and not later than March 31, 1989; or~~

~~(ii) For effluent limitations established on a case-by-case basis based on BPJ under paragraph (c)2 of this subsection, in a permit issued after February 4, 1987, compliance as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later than March 31, 1989;~~

~~c. For all toxic pollutants referred to in Section 6 of this administrative regulation the best available technology economically achievable (BAT):~~

~~(i) For effluent limitations established under CWA Section 304(b), as expeditiously as practicable but not later than three (3) years after the date the limitations are promulgated under CWA Section 304(b), and not later than March 31, 1989; or~~

~~(ii) For permits issued on a case-by-case basis based on BPJ under paragraph (c)2 of this subsection after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but not later than three (3) years after the date the limitations are established, and not later than March 31, 1989.~~

~~d. For all toxic pollutants other than those listed in Section 6 of this administrative regulation, effluent limitations based on BAT:~~

~~(i) For effluent limitations promulgated under CWA Section 304(b) compliance is required as expeditiously as practicable, but not later than three (3) years after the date the limitations are promulgated under CWA Section 304(b) and not later than March 31, 1989, or~~

~~(ii) For permits issued on a case-by-case BPJ basis under paragraph (c)2 of this subsection after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later than March 31, 1989.~~

~~e. For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT:~~

~~(i) For effluent limitations promulgated under CWA Section 304(b) compliance is required as expeditiously as practicable, but not later than three (3) years after the date the limitations are established and not later than March 31, 1989; or~~

~~(ii) For permits issued on a case-by-case BPJ basis under paragraph (c)2 of this subsection after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but not later than three (3) years after the date the limitations are established and not later than March 31, 1989.~~

~~(b) Variances and extensions.~~

~~1. The following variance from technology based treatment requirements is authorized by KRS Chapter 224 and may be applied for under 401 KAR 5.055. For dischargers other than POTWs:~~

~~a. Economic variance from BAT, as indicated in 401 KAR 5.055, Section 7(1);~~

~~b. Thermal variance from BPT, BCT, and BAT, under Section 4 of this administrative regulation, may be authorized.~~

~~2. An extension of the BAT deadline may be applied for under 401 KAR 5.055, Section 7(3) for dischargers other than POTWs, for use of innovative technology.~~

~~(c) Methods of imposing technology based treatment requirements in permits. Technology based treatment requirements may be imposed through one (1) of the following three (3) methods:~~

~~1. Application of EPA promulgated effluent limitations to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been withdrawn by EPA or remanded. In the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations under 401 KAR 5.055, and Section 3 of this administrative regulation.~~

~~2. On a case by case basis under CWA Section 402(a)(1) (33 U.S.C. Section 1342(a)(1)), to the extent that EPA promulgated effluent limitations are inapplicable. The cabinet shall apply the appropriate factors listed in paragraph (d) of this subsection and shall consider:~~

~~a. The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information; and~~

~~b. Any unique factors relating to the applicant.~~

~~3. Through a combination of the methods in paragraph (c)1 and 2 of this subsection. Where EPA promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to administrative regulation on a case by case basis in order to carry out the provisions of KRS Chapter 224.~~

~~4. Limitations developed under paragraph (c)2 of this subsection may be expressed, where appropriate, in terms of toxicity if it is shown that the limits reflect the appropriate requirements of KRS Chapter 224.~~

~~(d) In setting case by case limitations pursuant to paragraph (c) of this subsection, the cabinet shall consider the following factors:~~

~~1. For BPT requirements:~~

~~a. The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;~~

~~b. The age of equipment and facilities involved;~~

~~c. The process employed;~~

~~d. The engineering aspects of the application of various types of control techniques;~~

~~e. Process changes; and~~

~~f. Nonwater quality environmental impact (including energy requirements).~~

~~2. For BCT requirements:~~

~~a. The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;~~

~~b. The comparison of the cost and level of reduction of the pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of the pollutants from a class or category of industrial sources;~~

~~c. The age of equipment and facilities involved;~~

~~d. The process employed;~~

~~e. The engineering aspects of the application of various types of control techniques;~~

~~f. Process changes; and~~

~~g. Nonwater quality environmental impact (including energy requirements).~~

~~3. For BAT requirements:~~

~~a. The age of equipment and facilities involved;~~

~~b. The process employed;~~

~~c. The engineering aspects of the application of various types of control techniques;~~

~~d. Process changes;~~

~~e. The cost of achieving such effluent reduction, and~~

~~f. Nonwater quality environmental impact (including energy requirements).~~

~~(e) Technology based treatment requirements are applied prior to or at the point of discharge.~~

~~(f) Technology based treatment requirements shall not be satisfied through the use of "nontreatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case by case basis when:~~

~~1. The technology based treatment requirements applicable to the discharge are not sufficient to achieve the standards;~~

~~2. The discharger agrees to waive any opportunity to request a variance under 401 KAR 5.055, Section 3; and~~

~~3. The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.~~

~~(g) Technology based effluent limitations shall be established~~

~~under this administrative regulation for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.~~

~~(h)1. The cabinet may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or a limit for a nonconventional pollutant which shall not be subject to modification where:~~

~~a. Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant, or~~

~~b.(i) The limitation reflects BAT-level control of discharges of one (1) or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutants is not feasible for economic or technical reasons;~~

~~(ii) The permit identifies which toxic pollutants are intended to be controlled by use of the limitation, and~~

~~(iii) The fact sheet required by 401 KAR 5:075, Section 4, sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level control of the toxic pollutant discharges identified in paragraph (h)1b(ii) of this subsection, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutants.~~

~~2. The cabinet may set a permit limit for a conventional pollutant at a level more stringent than BCT when:~~

~~a. Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substance; or~~

~~b.(i) The limitation reflects BAT-level control of discharges, or an appropriate level of one (1) or more hazardous substances which are present in the waste stream, and a specific BAT, or other appropriate limitation upon the hazardous substances which are present in the waste stream, and a specific BAT, or other appropriate limitation upon the hazardous substance is not feasible for economic or technical reasons;~~

~~(ii) The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and~~

~~(iii) The fact sheet, required by 401 KAR 5:075, Section 4, sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level, or other appropriate level, control of the hazardous substances discharges identified in paragraph (h)1b(ii) of this subsection, and a finding that it would be economically or technically infeasible to directly limit the hazardous substances.~~

~~c. Hazardous substances which are also toxic pollutants are subject to paragraph (h)1 of this subsection.~~

~~3. The cabinet shall not set a more stringent limit under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutants or hazardous substances controlled by the limit were limited directly.~~

~~4. Toxic pollutants identified under paragraph (h)1 of this subsection remain subject to 401 KAR 5:065, Section 1(15), which requires notification of increased discharges of toxic pollutants above levels reported in the application form.~~

~~Section 2. Criteria for Issuance of Permits to Aquaculture Projects. (1) Purpose and scope.~~

~~(a) This section establishes guidelines for approval of any discharge of pollutants associated with an aquaculture project.~~

~~(b) This section authorizes, on a selective basis, controlled discharges which would otherwise be unlawful under KRS Chapter 224 in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially.~~

~~(c) Permits issued for discharges into aquaculture projects under this section are KPDES permits and are subject to all applicable requirements. Any permit shall include such conditions, including monitoring and reporting requirements, as are necessary to comply with the KPDES administrative regulations. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.~~

~~(2) Criteria.~~

~~(a) KPDES permits shall not be issued to an aquaculture project unless:~~

~~1. The cabinet determines that the aquaculture project:~~

~~a. Is intended by the project operator to produce a crop which has significant direct or indirect commercial value, or is intended to be operated for research into possible production of such a crop, and~~

~~b. Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.~~

~~2. The applicant has demonstrated, to the satisfaction of the cabinet, that the use of the pollutant to be discharged to the aquaculture project shall result in an increased harvest of organisms under culture over what would naturally occur in the area;~~

~~3. The applicant has demonstrated, to the satisfaction of the cabinet, that if the species to be cultivated in the aquaculture project is not indigenous to the immediate geographical area, there shall be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;~~

~~4. The cabinet determines that the crop shall not have a significant potential for human health hazards resulting from its consumption, and~~

~~5. The cabinet determines that migration of pollutants from the designated project area to waters of the Commonwealth outside of the aquaculture project will not cause or contribute to a violation of the applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a preexisting mixing zone area beyond what had been designated for the original discharge.~~

~~(b) Permits shall not be issued for any aquaculture project in conflict with a water quality management plan or an amendment to a plan approved by EPA.~~

~~(c) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area.~~

~~(d) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.~~

~~Section 3. Criteria and Standards for Determining Fundamentally Different Factors. (1) Purpose and scope.~~

~~(a) This section establishes the criteria and standards to be used in determining whether effluent limitations or pretreatment standards alternative to those required by promulgated EPA effluent limitations guidelines and categorical pretreatment standards, hereinafter referred to as "national limits," shall be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This section applies to all national limits promulgated by EPA except for best practicable treatment standards for steam-electric plants.~~

~~(b) This case-by-case review shall not be done unless data specific to that discharger indicate they present factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person asserting that factors relating to a discharger's facilities, equipment, processes, or other facilities related to the discharger are fundamentally different from the factors considered during the development of the national limits may request a fundamentally different factors variance under 401 KAR 5:055, Section 3. In addition, such a variance may be proposed by the cabinet in the draft permit.~~

~~(2) Criteria.~~

~~(a) A request for the establishment of effluent limitations under this section, fundamentally different factors variance, shall not be approved unless:~~

~~1. There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested;~~

~~2. Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limits; and~~

~~3. The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of 401 KAR 5:075.~~

~~(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines shall not be approved unless:~~

~~1. The alternative effluent limitation requested is not less stringent than justified by the fundamental difference;~~

~~2. The alternative effluent limitation or standard shall ensure compliance with the KPDES administrative regulations and KRS Chapter 224; and~~

~~3. Compliance with the national limits, either by using the technologies upon which the national limits are based or by other control alternative, would result in:~~

~~a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or~~

~~b. A nonwater quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.~~

~~(c) A request for alternative limits more stringent than required by national limits shall not be approved unless:~~

~~1. The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and~~

~~2. Compliance with the alternative effluent limitation or standard would not result in:~~

~~a. A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or~~

~~b. A nonwater quality environmental impact, including energy requirements, fundamentally more adverse than the impact considered during development of the national limits.~~

~~(d) Factors which may be considered fundamentally different are:~~

~~1. The nature or quality of pollutants contained in the raw waste load of the discharger's process wastewater;~~

~~2. The volume of the discharger's process wastewater and effluent discharged;~~

~~3. Nonwater quality environmental impact of control and treatment of the discharger's raw waste load;~~

~~4. Energy requirements of the application of control and treatment technology;~~

~~5. Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities, processes employed, process changes, and engineering aspects of the application of control technology; and~~

~~6. Cost of compliance with required control technology.~~

~~(e) A variance request or portion of such a request under this section shall not be granted on any of the following grounds:~~

~~1. The infeasibility of installing the required waste treatment equipment within the time allowed in Section 1 of this administrative regulation;~~

~~2. The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed in paragraph (d) of this subsection;~~

~~3. The discharger's ability to pay for the required waste treatment; or~~

~~4. The impact of a discharge on local receiving water quality.~~

~~(3) Method of application.~~

~~(a) A written request for a variance under this administrative regulation shall be submitted in duplicate to the cabinet in accordance with 401 KAR 5:075.~~

~~(b) The burden is on the person requesting the variance to demonstrate that:~~

~~1. Factors listed in subsection (2) of this section regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The requester shall refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication, etc., relevant to the regulations which are kept on public file by the EPA;~~

~~2. The alternative limitations requested are justified by the fundamental difference alleged in subparagraph 1 of this paragraph; and~~

~~3. The appropriate requirements of subsection (2) of this section have been met.~~

~~Section 4. Criteria for Determining Alternative Effluent Limitations. (1) Purpose and scope. The factors, criteria and standards for the establishment of alternative thermal effluent limitations described in CWA Section 316(a) (33 U.S.C. Section 1326(a)) shall also be used in KPDES permits and shall be referred to as 401 KAR 5:055, Section 7(4), variances.~~

~~(2) Early screening of applications for 401 KAR 5:055, Section 7(4), variances.~~

~~(a) Any initial application for the variance shall include the following early screening information:~~

~~1. A description of the alternative effluent limitation requested;~~

~~2. A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;~~

~~3. A general description of the type of data, studies, experiments, and other information which the discharger intends to submit for the demonstration; and~~

~~4. Data and information as may be available to assist the cabinet in selecting the appropriate representative important species.~~

~~(b) After submitting the early screening information under paragraph (a) of this subsection, the discharger shall consult with the cabinet at the earliest practicable time, but not later than thirty (30) days after the application is filed, to discuss the discharger's early screening information. Within sixty (60) days after the application is filed, the discharger shall submit for the cabinet's approval a detailed plan of study which the discharger will undertake to support its 401 KAR 5:055, Section 7(4), demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical, and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species, and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the cabinet shall either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the cabinet subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger shall provide any additional information or studies which the discharger contends are appropriate to support the demonstration.~~

~~(c) Any application for the renewal of 401 KAR 5:055, Section 7(4), variance shall include only the information described in paragraphs (a) and (b) of this subsection and 401 KAR 5:075 as the cabinet requests within sixty (60) days after receipt of the permit application.~~

~~(d) The cabinet shall promptly notify the Secretary of the U.S. Department of Commerce, the Secretary of the U.S. Department of the Interior, and any affected state of the filing of the request and shall consider any timely recommendations they submit.~~

~~(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making the demonstrations.~~

~~(f) If an applicant desires a ruling on a 401 KAR 5:055, Section 7(4), application before the ruling on any other necessary permit terms and conditions, it shall so request upon filing its application under paragraph (a) of this subsection. This request will be granted or denied at the discretion of the cabinet.~~

~~(3) Criteria and standards for the determination of alternative effluent limitations.~~

~~(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the cabinet that the effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made. This demonstration shall show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the~~

~~species affected, shall assure the protection and propagation of a balanced indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made.~~

~~(b) In determining if the protection and propagation of the affected species will be assured, the cabinet may consider any information contained or referenced in any applicable thermal water quality criteria and information published by the administrator under CWA Section 304(a) (33 U.S.C. Section 1314(a)) or any other information it deems relevant.~~

~~(c) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any demonstrations shall show:~~

~~1. That no appreciable harm has resulted from the normal component of the discharge, taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge has been made; or~~

~~2. That despite the occurrence of previous harm, the desired alternative effluent limitations, or appropriate modifications thereof, shall nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.~~

~~(d) In determining if prior appreciable harm has occurred, the cabinet shall consider the length of time in which the applicant has been discharging and the nature of the discharge.~~

~~Section 5. New Sources and New Dischargers. (1) Criteria for new source determination.~~

~~(a) Except as otherwise provided in an applicable new source performance standard, a source is a "new source" if it meets the definition of "new source" in 401 KAR 5:001; and:~~

~~1. It is constructed at a site at which no other source is located;~~

~~2. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or~~

~~3. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the cabinet shall consider such factors as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source.~~

~~(b) A source meeting the requirements of paragraph (a) of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no independently applicable standard, the source is a new discharger. See 401 KAR 5:001.~~

~~(c) Construction on a site at which an existing source is located results in a modification subject to 401 KAR 5:070, Section 6 rather than a new source or a new discharger if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph (a) of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.~~

~~(d) Construction of a new source as defined under 401 KAR 5:001 has commenced if the owner or operator has:~~

~~1. Begun or caused to begin as part of a continuous on-site construction program:~~

~~a. Any placement, assembly, or installation of facilities or equipment; or~~

~~b. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or~~

~~2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be revoked or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.~~

~~(e) When a KPDES permit issued to a source with a "protection period" under subsection (2)(a) of this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of Section 1 of this administrative regulation and CWA Section 301 (33 U.S.C. Section 1311) and any other then applicable CWA requirements immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed except when necessary to achieve compliance with requirements promulgated less than three (3) years before the expiration of the protection period.~~

~~(f) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed ninety (90) days), the owner or operator shall meet all permit conditions. The requirements of this subsection do not apply if the owner or operator is issued a permit containing a compliance schedule under 401 KAR 5:070, Section 2(1).~~

~~(g) After the effective date of new source performance standards, no owner or operator shall operate the source in violation of those standards applicable to the source.~~

~~(2) Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this subsection.~~

~~(a) Except as provided in paragraph (b) of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, shall not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under CWA Section 301(b)(2) (33 U.S.C. Section 1311(b)(2)) for the soonest ending of the following periods.~~

~~1. Ten (10) years from the date that construction is completed;~~

~~2. Ten (10) years from the date the source begins to discharge process or other nonconstruction related wastewater; or~~

~~3. The period of depreciation or amortization of the facility for the purposes of Internal Revenue Code Section 167 or 169 (26 U.S.C. Section 167 or 169).~~

~~(b) The protection from more stringent standards of performance afforded by paragraph (a) of this subsection does not apply to:~~

~~1. Additional or more stringent permit conditions which are not technology based, for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under CWA Section 307(a) (33 U.S.C. Section 1317 (a)); or~~

~~2. Additional permit conditions in accordance with 401 KAR 5:065, Section 2(5) controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.~~

~~Section 6.~~]Toxic Pollutants. References throughout the KPDES administrative regulations, 401 KAR 5:002 through 5:300, establish[specific] requirements for discharges of toxic pollutants. Subsections (1) through (66) identify[~~The following listing identifies~~] those toxic pollutants that shall[~~required to~~] be considered for each of these KPDES requirements.[-]

(1) Acenaphthene.
(2) Acrolein.
(3) Acrylonitrile.
(4) Aldrin or dieldrin.
(5) Antimony and compounds.
(6) Arsenic and compounds.
(7) Asbestos.
(8) Benzene.
(9) Benzidine.
(10) Beryllium and compounds.
(11) Cadmium and compounds.
(12) Carbon tetrachloride.
(13) Chlordane (technical mixture and metabolites).
(14) Chlorinated benzenes (other than dichloro-benzenes).
(15) Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-

trichloroethane, and hexachloroethane).

(16) Chloroalkyl ethers (chloromethyl, chloroethyl, and mixed ethers).

(17) Chlorinated naphthalene.

(18) Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols).

(19) Chloroform.

(20) 2-chlorophenol.

(21) Chromium and compounds.

(22) Copper and compounds.

(23) Cyanides.

(24) DDT and metabolites.

(25) Dichlorobenzenes (1,2-, 1,3-, and 1,4- dichlorobenzenes).

(26) Dichlorobenzidine.

(27) Dichloroethylenes (1,1- and 1,2-dichloroethylene).

(28) 2,4-dichlorophenol.

(29) Dichloropropane and dichloropropene.

(30) 2,4-dimethylphenol.

(31) Dinitrotoluene.

(32) Diphenylhydrazine.

(33) Endosulfan and metabolites.

(34) Endrin and metabolites.

(35) Ethylbenzene.

(36) Fluoranthene.

(37) Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ether, bromophenylphenyl ether, bis(dischloroisopropyl) ether, bis(chloroethyoxy) methane and polychlorinated diphenyl ethers).

(38) Halomethanes (other than those listed elsewhere; includes methylene chloride methylchloride, methyl-bromide, bromoform, dichlorobromomethane, trichlorofluoromethane, dichlorodifluoromethane).

(39) Heptachlor and metabolites

(40) Hexachlorobutadiene.

(41) Hexachlorocyclohexane (all isomers).

(42) Hexachlorocyclopentadiene.

(43) Isophorone.

(44) Lead and compounds.

(45) Mercury and compounds.

(46) Naphthalene.

(47) Nickel and compounds.

(48) Nitrobenzene.

(49) Nitrophenols (including 2,4-dinitrophenol, dinitrocresol).

(50) Nitrosamines.

(51) Pentachlorophenol.

(52) Phenol.

(53) Phthalate esters.

(54) Polychlorinated biphenyls (PCBs).

(55) Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)

(56) Selenium and compounds.

(57) Silver and compounds.

(58) 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD).

(59) Tetrachloroethylene.

(60) Thallium and compounds.

(61) Toluene.

(62) Toxaphene.

(63) Trichloroethylene.

(64) Vinyl chloride.

(65) Zinc and compounds.

(66) The term "compounds" shall include organic and inorganic compounds.

Section 8. The level of effluent quality attainable through the application of secondary or equivalent treatment shall be as established in 40 C.F.R. 133.100, 133.101, 133.102, 133.103, 133.104; and 133.105.

Section 9. Modifications, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the United States" shall be modified to "Waters of the Commonwealth" in the federal regulations cited in Sections 1 through 8 of this administrative regulation;

(2) "Director" shall be modified to "cabinet" if the cabinet has delegated authority in the federal regulations cited in Sections1 through 8 of this administrative regulation;

(3) "NPDES" shall be modified to "KPDES" if the cabinet has delegated authority in the federal regulations cited in Sections 1 through 8 of this administrative regulation; and

(4) The notification requirements related to applications for a thermal variance shall be modified to add the notification of interstate agencies in 40 C.F.R. 125.72(d).

LEONARD K. PETERS, Secretary

FILED WITH LRC: April 14, 2009 at 9 a.m.

APPROVED BY AGENCY: April 13, 2009

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2009 at 10 a.m. at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2009, 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 June 1, 2009. 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: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Peter T. Goodmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria and standards for the KPDES permitting system and provides that any exemptions granted in the issuance of KPDES permits shall be pursuant to 33 U.S.C. 1311, 1312, and 1326(a).

(b) The necessity of this administrative regulation: KRS 224.16-050 authorizes the Cabinet to implement the Federal Water Pollution Control Act of 1977 (Pub.L. 95-217). This regulation provides specific requirements for permitting discharges into waters of the Commonwealth. All NPDES delegated states must have compatible state regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms to KRS 224.16-150 which authorizes the Environmental and Public Protection Cabinet to implement the Federal Water Pollution Control Act. This regulation is consistent with the pollution prevention goals of KRS Chapter 224.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the administration of KRS 224.16-050 by providing specific standards, criteria, schedules of compliance, and requirements for variances.

(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 will clarify that the cabinet must notify interstate agencies of a variance to permit limitations. This amendment further clarifies secondary treatment standards for publicly owned treatment works by explicitly citing the standards rather than referring to the Clean Water Act sections from which the standards are derived. This amendment also revises ambiguous terms in accordance with KRS 13A, provides federal citations, and strikes the federal language reproduced in the body of the state administrative regulation.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this regulation to clarify that the cabinet shall notify an interstate agency of variances granted

by the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-150 which authorizes the cabinet to implement the Federal Water Pollution Control Act. This amendment conforms to KRS 224.18-100 authorizing interstate environmental compacts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies that the cabinet has responsibility to notify an interstate agency of proposed variances.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the KPDES permitting program. This regulation affects over 10,000 existing permitted entities including individuals, businesses and governmental organizations. After analysis of the current types of permits, the regulation is expected to impact the following number of entities:

a. Individuals: The number of permits issued to an individual under this regulation other than for a business or organization is insignificant.

b. Businesses: 1,600 per year, primarily through industrial permits, non-public entity sanitary wastewater permits, and stormwater coverage issuances.

c. Organizations: 100 per year, primarily through individual sanitary permits issued to non-public organizations such as churches, summer camps, and private social or sporting clubs.

d. State or Local Government: 30 per year, primarily through permits for Public-Owned Treatment Works (POTWs).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will have to comply with permit conditions and limitations of interstate agencies. This change should cause very little additional impact because Kentucky's standards are typically more stringent than or as stringent as interstate agency standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no expected increase in cost to those entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Regulated entities will not be confused by potential authority gaps arising between state and federal regulations as applied in interstate waters, nor will there be confusion about the responsibility of the cabinet to notify interstate agencies of variances proposed by the cabinet.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional burden is anticipated.

(b) On a continuing basis: No additional burden is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, General Funds, and EPA Funds. There is no change in source of funding because of this amendment.

(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 fee or funding increases will be necessary because of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly affect fees.

(9) TIERING: Is tiering applied? The federal regulations provide tiered regulatory requirements through the identification of classes of industrial users, through specific requirements of POTWs, and through requirements for specific categories of dischargers. Program requirements and limitations depend upon the size and the specific category of the user. To the extent that corresponding federal regulations provide for tiering, these amendments are tiered.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects all units of state or local government that have a KPDES discharge permit. The portion of the proposed amendment related to notification of interstate agencies affects only those who discharge into waters bordering other states.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Clean Water Act and KRS Chapter 224.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
This regulation is expected to affect approximately thirty state or local government agencies per year as wastewater permits are issued or re-issued. The amendment of 401 KAR 5 080 requires the cabinet to notify an interstate agency if an applicant requests a variance from the effluent standards. This notification will not have a significant impact upon state agency expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not expected to generate additional state or local government revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
40 C.F.R. 122 and U.S.C. 1251-1387.

2. State compliance standards. KRS 224.16-050, 224.18-100.

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act, as Amended (33 U S C. 1251-1387).

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Commission on the Deaf and Hard of Hearing
(Amendment)

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing, and speech impaired.

RELATES TO: KRS 12.290, 61.878, 163.500-163.527, 334.010(9), 334.020, 29 U.S.C. 794, 42 U.S.C. 12101
STATUTORY AUTHORITY: KRS 12.290, 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf or hard-of-hearing KRS 163.525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regulations to establish procedures for application for, and distribution of, specialized telecommunications equipment. This administrative regulation establishes eligibility criteria, requirements for application, and certification procedures.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification".

(3) "Audiologist" is defined at KRS 334A 020(5), and is limited to a person licensed by the board, as defined at KRS 334A.020(1).

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the Telecommunications Access Program staff.

(6) "Deaf" and "hard of hearing" are defined by KRS 163.500.

(7) "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(9) "Hearing instrument specialist" means "specialist in hearing instruments" as defined at KRS 334.010(9).

(10) "KCDHH" means the Kentucky Commission on Deaf and Hard of Hearing, as described at KRS 163 506.

(11) "Physician" means a person:

(a) With a medical degree;

(b) Licensed by the state in which he or she practices medicine; and

(c) Recognized, by the state Board of Medical Licensure in the state in which the physician [~~he or she~~] practices, as a specialist in:

1. Family practice;

2. General practice; or

3. Otolaryngology.

(12) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(13) "Specialized telecommunications equipment" or "STE" means readily-available or emerging adaptive equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications services, such as:

(a) Telecommunication devices for the deaf;

(b) Amplifiers;

(c) Voice carry over telephones;

(d) Captioned telephones;

(e) Visual, audible, or tactile ring signal devices; and

(f) Appropriate wireless devices.

(14) "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

(15) "Specialized telecommunications equipment" or "STE" is defined by KRS 163.525(1)(a).

(16) "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic air waves or hard wired methods.

(17) "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. General Applicant Criteria (1) An applicant shall be:

(a) A person who has resided in Kentucky for one (1) year prior to the date of application, as demonstrated by one (1) or more of the following:

1. Possession of a Kentucky driver's license;

2. Registered to vote in Kentucky;

3. Registered automobile in;

4. Filed Kentucky income tax return for the calendar year preceding the date of application;

5. Stationed in Kentucky on active military orders for at least one (1) year as a member of the Armed Forces, or his or her dependent; or

6. Enrolled as a student at an institution of higher learning located in Kentucky and meeting the residency requirements of 13 KAR 2.045;

(b) At least five (5) years of age and if the applicant is between five (5) and eighteen (18) years of age, the applicant's parents or guardians shall:

1. Apply on behalf of the child; and

2. Assume full responsibility for the equipment; and

(c) Deaf, hard of hearing or speech impaired such that the applicant cannot use the telephone for communication without adaptive specialized telecommunications equipment.

(2) An application shall be:

(a) Made on a "Telecommunications Access Program Application and Certification" form, incorporated by reference;

(b) Signed and submitted in person or by mail;

(c) Accompanied by:

1. A copy of a telephone bill showing telephone number and name and address of the person being billed for residential telephone customers;

2. A copy of the applicant's proof of residence;

3. Document of certification, as required by subsection (4) of this section.

(3) An applicant shall provide additional supporting documentation if requested by KCDHH.

(4) An applicant shall provide professional certification of the extent and permanence of the applicant's disability.

(a) Certification shall be at the applicant's expense.

(b) Certification shall be performed and provided by:

1. A licensed physician;

2. A licensed audiologist,

3. A licensed speech-language pathologist;

4. A licensed hearing instrument specialist, or

5. A public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals, subject to approval by the KCDHH.

(5) Except for an individual receiving assistance from a program providing telephone services to persons normally unable to afford the services or an applicant for a wireless device, an applicant shall subscribe to or have currently applied for telephone service, including:

(a) Installation of a telephone line in the applicant's home, at the applicant's expense; and

(b) Payment of monthly telephone bills.

(6) Eligible applicants shall be awarded program participation on a first-come, first-serve basis, in accordance with the approved date, as determined by the dated signature of the Telecommunications Access Program staff. Eligible applicants shall be placed on a waiting list during times of fiscal constraint.

(7) KCDHH shall distribute the STE in compliance with:

(a) The Model Procurement Code, KRS Chapter 45A; and

(b) 735 KAR 1.020.

(8)[~~(7)~~] Not more than two (2) STEs one (1) of which shall be a visual, auditory, or tactile signaler, shall be distributed to a deaf, hard of hearing, or speech-impaired individual per telecommunications access line [~~for one (1) residential access line only~~].

Section 3. Application Process. (1) The KCDHH staff shall provide assistance in completing forms if requested by an applicant.

(2) The Telecommunications Access Program staff shall review each application in the order the KCDHH office receives them, in order to determine if.

(a) All the necessary information is completed on the application;

(b) All required documentation is included; and

(c) All eligibility requirements are met.

(3) If the criteria in subsection 2 of this section are met, the application shall be approved, dated, and signed by the Telecom-

munications Access Program staff. The approved date shall determine the first-come, first-serve roster.

(4) The KCDHH shall, within sixty (60) days of receipt of the application, notify an applicant if the application has been approved or rejected.

(5) The KCDHH shall, within sixty (60) days of receipt of the application, provide to an ineligible applicant, written reasons for the determination of ineligibility. An applicant denied participation may reapply if, due to a change in conditions, the eligibility requirements as delineated in Section 2 of this administrative regulation are met.

(6) Training to properly select and use the STE shall be provided to applicants upon request.

Section 4. An application shall be denied if.

(1) The applicant does not meet the eligibility requirements as established in KRS 163.525, this administrative regulation or 735 KAR 1:020;

(2) The applicant has received STE from the Telecommunications Access Program within the preceding four (4) years;

(3) The applicant is an active consumer of the Office of Vocational Rehabilitation and receives a STE as part of an individual plan of employment, also know as an "IPE";

(4) The applicant has negligently or willfully damaged a STE previously received from the KCDHH's Telecommunications Access Program, or has violated another provision of the law governing the Telecommunications Access Program;

(5) The applicant fails to provide a police report of a stolen device or refuses to cooperate with the police investigation in the prosecution of the suspect, including the refusal to testify in court when subpoenaed to do so;

(6) A police report of a stolen device shows the applicant was negligent, for example by leaving the doors to the house or car unlocked or unattended;

(7) The applicant has lost or sold the STE; or

(8) In the case of replacing the equipment after four (4) years have passed, the original STE is found to be technologically up to date and functional by the KCDHH.

Section 5. Replacing the Specialized Telecommunications Equipment. During times of fiscal constraint a reapplication shall be accepted and held pending until funds become available. An applicant shall provide verification of eligibility at the time the reapplication is processed.

(1) A recipient may apply to replace the original STE if:

(a) The STE is damaged as a result of a natural disaster;

(b) There is a change in status, such as deteriorating vision or hearing;

(c) A new device has become available through the Telecommunications Access Program that is more appropriate to the recipient's disability than a device previously received through the program; or

(d) It has been four (4) years since the applicant last received STE.

(2) As funds are available, new STE to replace existing STE shall be issued to applicants who:

(a) Demonstrate eligibility; and

(b) Comply with the provisions of the administrative regulations governing the Telecommunications Access Program established in this administrative regulation and 735 KAR 1.020.

(3) Priority shall be given in the distribution of STE to first-time recipients during times of fiscal constraint.

(4) If a replacement is requested because the STE is damaged as a result of a natural disaster, the recipient shall first send the damaged equipment to the KCDHH, or directly to the vendor as directed by Telecommunications Access program staff.

(a) If necessary, the KCDHH shall send the damaged STE to the vendor for verification of unrepairable damage.

(b) If the vendor certifies to the KCDHH that the equipment provided to the recipient is unrepairable due to natural disaster, a replacement shall be issued to the recipient, upon reapplication, subject to:

1. Equipment availability;

2. Compliance with eligibility criteria established in this administrative regulation; and

3. The first-come, first-served provision; and

4. Availability of funds.

(5) If the recipient obtains certification from a physician, audiologist, hearing instrument specialist, or speech-language pathologist stating that the recipient will benefit from another device available through the KCDHH Telecommunications Access Program due to a change in disability status or a new device becoming available, then a replacement shall be issued to the applicant based on first-come, first-served and availability of funds. As an alternative, a public or private agency providing direct services to deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(6) If a replacement is requested due to the STE being stolen, then the recipient shall:

(a) Notify local police within thirty (30) days of the theft;

(b) Forward a copy of the police report to the KCDHH within ten (10) working days of the date the theft was reported; and

(c) Aid in the prosecution of the alleged perpetrator of the theft, if a suspect is identified.

(7) If a replacement is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.

(a) The KCDHH shall determine if the original STE is technologically obsolete or nonfunctional.

(b) If the original STE is:

1. Technologically obsolete or nonfunctional, then the recipient shall follow the application process to replace the equipment as delineated in this administrative regulation and 735 KAR 1:020; or

2. Not determined to be technologically obsolete or nonfunctional then the application for a replacement shall be denied and the original STE shall be returned to the recipient.

Section 6. Fraud. If a recipient obtained STE under false premises or through misrepresentation of facts on the application, the KCDHH shall demand return of the equipment immediately. Upon demand, the recipient shall return the STE and shall be ineligible to participate in the KCDHH Telecommunications Access Program thereafter.

Section 7. Confidentiality. All applicant and recipient information shall be kept confidential in compliance with the Open Records Law, KRS 61.878.

Section 8. Incorporation by Reference. (1) "Telecommunications Access Program Application and Certification", April 2009[~~December 2006~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the offices of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, Telephone 800-372-2907, V/TDD or (502) 573-2604 V/TDD, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky Commission on the Deaf and Hard of Hearing has reviewed this administrative regulation, prior to its filing with the Legislative Research Commission, as required by KRS 163.525(5).

DR. PATRICIA FREEMAN, Chair
LIZ HILL, Executive Director

APPROVED BY AGENCY: April 1, 2009

FILED WITH LRC: April 7, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 22, 2009 at 10 a.m., at the office of the Kentucky Commission on the Deaf and Hard of Hearing, located at 632 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing within 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is submitted. 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 June 1, 2009. 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: Rowena Holloway, Internal Policy Analyst III, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 (V/T), fax (502) 573-2604, email Row.holloway@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Liz Hill

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Telecommunication Access Program (TAP), administered by the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) was implemented in 1996 as a result of legislation enacted by the General Assembly in 1995. The TAP ensures equal access to telecommunications services by providing specialized telecommunications equipment (STE) to citizens of the Commonwealth who are deaf, hard of hearing, or speech impaired. This administrative regulation establishes the processing system for vendor participation in the TAP as well as outlining requirements for the security, maintenance and repair of the STE distributed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.525(5), which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute STE to any deaf, hard of hearing, or speech-impaired person qualified to receive the equipment at no additional cost beyond a single party telecommunication access line.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation confirms to the content of the authorizing statues by establishing the processing system for vendors, security, and the maintenance and repair of equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the processing requirements for vendors to distribute wireless telecommunication devices as well as outlining security, maintenance, and repair provisions of the system.

(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 will provide procedures for vendor participation in the distribution of wireless telecommunications devices through the TAP. The addition of wireless devices, such as pagers, to the distribution program will fulfill the unmet need of consumers for current technology necessary to access communications regardless of geographical location and will allow consumers to obtain prompt and accessible notification during disasters and weather related emergencies. The criteria for establishing and maintaining a vendor contract to distribute wireless devices is outlined in this amendment.

(b) The necessity of the amendment to this administrative regulation: Per KRS 278.548, the Public Service Commission (PSC) has authority to determine the appropriate funding mechanism for the TAP. As a result of a petition request from the KCDHH, the PSC issued an order (Case No. 2007-0464), which expanded the funding base for the TAP to include wireless telecommunication providers statewide. This amendment is necessary to incorporate procedures for acquiring a vendor to distribute wireless telecommunication devices through the TAP and sets the standards for security, maintenance, and repair of equipment purchased by the TAP. Program costs will increase as a result of the addition of wireless devices to the program, but are fully funded by a surcharge on all telecommunication access lines throughout the state. Current staff will be utilized to process the new applications for specialized equipment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will allow the governing body to establish procedures for vendors of wireless devices necessary to provide equitable access to telecommunications services and allow for establishment of procedures regarding security, maintenance and repair of specialized equipment.

(d) How the amendment will assist in the effective administration of the statutes: The Federal Telecommunications Act of 1996 was implemented to promote competition, reduce regulations, secure lower prices and higher quality services for telecommunications consumers and encourage the rapid deployment of new telecommunications technologies. The number of households with residential telephone lines has decreased dramatically over the last 4 years, not only in Kentucky but nationwide. Wireless subscribers have increased substantially and that trend is expected to continue as many consumers substitute wireless service for landline service to meet their communication needs. Wireless devices can be used to alert individuals with hearing loss to an emergency situation or an impending disaster. Without such a device, a large portion of the 646,683 deaf and hard of hearing individuals in Kentucky may be unaware of impending danger and unable to respond during an emergency. Wireless devices can be utilized to communicate with first responders or emergency personnel on a one-to-one basis in situations where interpreters and captioning may not be available, to assist in providing equitable access as mandated by the Americans with Disabilities Act. To ensure that no legitimate need for telecommunication equipment goes unmet within the Commonwealth wireless devices must be distributed through the TAP. This amendment establishes a processing system for vendor participation, security and maintenance and repair of specialized equipment distributed to meet the needs of the citizens of the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Vendors who seek to do business with the Commonwealth are affected by this regulation. The TAP has had more than 12,000 applications since its implementation in 1995. There are 646,683 deaf, hard of hearing, or speech impaired consumers within the Commonwealth that could potentially be eligible to receive a wireless device through the TAP. Currently 6 vendors are partially supported by contract allocations to supply the equipment distributed by TAP and this amendment will add at least one additional vendor, potentially more. Individuals will benefit from the security, maintenance, and repair procedures outlined as requirements within this regulation. Organizations and state or local governments are not affected by this amendment, which pertains to specialized telecommunications equipment vendors.

(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: Vendors will profit from the sale of specialized equipment, as well as increase their consumer base, which in turn will boost a sagging economy. Consumers will benefit from requirements within this regulation regarding the security, maintenance, and repair of equipment distributed through the TAP.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Direct costs for the administrative operation of the TAP and procurement of specialized telecommunications equipment will be covered by the increase in restricted funds accrued from wireless providers after the June 1, 2009 effective date. There will be no additional cost pertaining to the selection of a vendor to distribute wireless devices, or the procedures utilized to secure, maintain and repair the purchased equipment.

(b) On a continuing basis: There will be no additional cost for implementing this regulation on an ongoing basis as vendor contracts for equipment are processed on a designated timeframe and the selected vendor for wireless equipment will be added to that contract rotation. Continued indirect costs include time spent by the Internal Policy Analyst III to monitor and amend vendor contracts, estimated to be five percent of the total job responsibilities.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The PSC has authority to modify the funding mechanism for TAP as set forth within KRS 163.525 and holds an agreement with the KCDHH outlining responsibilities of both parties. Per the directive of PSC case # 2007-00464, effective June 1, 2009, the TAP will receive 2 cents per telecommunications access line to support procurement

of specialized equipment through June 30, 2010. Effective July 1, 2010, the TAP portion of the surcharge reverts to one cent per telecommunications access line. Program funds will be used to administer provisions of the vendor contracts as outlined in 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 fees are charged to maintain vendors within the TAP as the program accrues sufficient funds to support the amendments to this regulation. Therefore, this regulation change does not impact fees or funding

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly established or increased by this amendment as the TAP is funded by a surcharge on telecommunication access lines. The PSC order actually reduced the overall surcharge from nine cents imposed on landlines only to the new amount effective June 1, 2009 of four cents per access line, both wired and wireless.

(9) TIERING: Is tiering applied? Tiering is applied in times of "fiscal constraint", which is defined as 75% of the TAP funds being disbursed or encumbered. Consumers who are deaf, hard of hearing, or speech impaired and have not previously received equipment are given first priority in times of fiscal constraint. If funds are available, consumers are permitted to reapply and receive new equipment once every 4 years. Vendors will be asked to provide a 2-year warranty on wireless devices, which supports the estimated life of the equipment, and 4 years on standard equipment, which typically continues to be functional past the warranty period Vendors must comply with all requirements of the contract per KRS Chapter 45A, Kentucky Model Procurement Code.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) operates the Telecommunications Access Program (TAP) as mandated by KRS 163.525 and provides specialized telecommunications equipment (STE) to deaf, hard of hearing, or speech impaired consumers. Professional audiologists, speech pathologists, and hearing instrument specialists, as well as agencies and organizations statewide, which provide support services to this population, will be positively impacted by referring consumers to the TAP for assistive equipment at no cost to the agency or the consumer. State and local governments will be positively impacted in that consumers requesting services will be able to utilize wireless devices to more equitably access communication with state and local governments. This administrative regulation amendment will have no direct fiscal impact on these entities, other than KCDHH. All costs associated with the operation of the TAP will be covered by restricted funds allocated to the program from the collection of the surcharge.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky statues at KRS 163.510, 163.525, 163.527, 278.548, and 278.5499 and provisions of KRS Chapter 13A. Kentucky regulations at 735 KAR 1.010 and 1·020. Federal mandates at 47 U.S.C. 225 and 42 U S C. 12101, including provisions of the Americans with Disabilities Act (ADA) and Section 504 (29 U.S.C. 794) and Section 508 (29 U.S.C. 794d) of the Rehabilitation Act of 1973, as amended.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Both revenues and expenditures for the TAP will increase per the number of wireless access lines contributing to the two cent surcharge, which becomes effective June 1, 2009 as a result of a petition filed by KCDHH with the Public Service Commission (PSC). Effective June 30, 2010, the portion of the surcharge allocated to the TAP reverts back to one cent per access line per KRS 278.5499. The overall telecommunications surcharge will be reduced from the current 9 cents to 4 cents effective June 1, 2009, benefiting consumers' statewide and meeting requirements of Title IV of the ADA. No other state or local governments will be fiscally impacted by this regulation amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Based on the number of telecommunication access lines in Kentucky, it is estimated that the TAP will collect $750,000 during the first year while the 2 cents per access line is being allocated to the TAP.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Based on the number of telecommunication access lines in Kentucky, it is estimated that the program will collect $375,000 during the subsequent years if the TAP portion of the surcharge reverts back to one cent per telecommunications access line.

(c) How much will it cost to administer this program for the first year? With the inclusion of wireless devices in the TAP, it is estimated the full $750,000 collected from the surcharge will be required to administer the program and purchase the commodities (equipment distributed) for the program's consumers.

(d) How much will it cost to administer this program for subsequent years? With the inclusion of wireless devices to the TAP and the anticipated need for this kind of specialized equipment, it is estimated the $375,000 collected from the surcharge will be insufficient to administer the program and purchase the commodities (equipment distributed) for the program's consumers. If this is confirmed after the first year of operation under this amended regulation, the KCDHH will request that the TAP allotment of the surcharge remain at the 2 cents per telecommunications access line collected during the first year of operation. If that request is granted, KRS 278.5499 will be amended accordingly.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-).
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate This administrative regulation is mandated to comply with the Americans with Disabilities Act (ADA) of 1990 Pub.L. No. 101-336 (42 U.S.C. 12101) pursuant to Title IV of the ADA (47 U.S.C. 225), the Federal Communications Commission (FCC) regulations enforcing the Telecommunications Accessibility Enhancement Act of 1988, which established the relay service, and the Rehabilitation Act of 1973, Section 504 (29 U.S.C. 794) and Section 508 as amended (29 U.S.C. 794d).

2 State compliance standards. This administrative regulation was promulgated pursuant to KRS 163.525, mandating implementation of an equipment distribution program to ensure equitable access to telecommunications for the deaf, hard of hearing, and speech impaired as established pursuant to KRS 278 548. The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) functions under a memorandum of agreement with the Public Service Commission for coordination and oversight of funding and operations to meet the objectives of KRS 278.5499. Procedures for application and distribution of equipment are defined in 735 KAR 1.010 and 735 KAR 1:020, in accordance with provisions of KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. (42 U.S.C. 12101) provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities including enforceable standards addressing this discrimination (47 U.S.C. 225) mandates provision of telecommunications relay services (TRS) every day, 24 hours a day. TRS is defined as telephone transmission service that provides the ability for an individual who has a hearing or speech disability to engage in communication by any means of telecommunications

access with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate. (29 U S C 794) states that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any executive agency or by the U.S. FCC. This includes removal of architectural, transportation or communication barriers and ensures that federal agencies provide accessibility to disabled individuals, in the development, procurement, maintenance, or use of electronic and information technology, unless an undue burden would be imposed on such an agency In such case, an alternate means of accessing the data will be provided to the disabled individuals (29 U.S C. 794d) mandates new opportunities for people with disabilities to use telecommunications be made available and development of technologies that will help achieve accessibility are pursued. Agencies must give disabled members of the public access to information that is comparable to the access available to others.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements or additional or different responsibilities than mandated by federal requirements. Kentucky's Telecommunication Access Program (TAP) will better meet the needs of our deaf, hard of hearing and speech impaired consumers, by providing wireless technology. Collection of a surcharge on all telecommunications access lines throughout the Commonwealth will be sufficient to cover the costs incurred by the program, including procurement of equipment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Commission on the Deaf and Hard of Hearing
(Amendment)

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

RELATES TO: KRS 12 290, Chapter 45A, 61.878, 163 500-163.527, 334.010(9), 334.020, 29 U.S.C. 794, 42 U.S.C. 12101

STATUTORY AUTHORITY: KRS 12 290, 163 525(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12 290 requires each administrative body of state government to promulgate administrative regulations in compliance with federal mandates to provide accessibility to services by persons who are deaf or hard of hearing. KRS 163.525(5) requires the Commission on the Deaf and Hard of Hearing to promulgate administrative regulations to establish procedures for application for, and distribution of, telecommunications devices. This administrative regulation establishes procedures for specialized telecommunications equipment vendors, for security, and for maintenance and repair.

Section 1. Definitions (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(2) "Application" means the current KCDHH Telecommunications Access Program application entitled "Telecommunications Access Program Application and Certification".

(3) "Audiologist" is defined at KRS 334A.020(5), and is limited to a person licensed by the board, as defined at KRS 334A 020(1).

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the Telecommunications Access Program staff.

(6) "Deaf" and "hard of hearing" are defined by KRS 163.500.

(7) "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(9) "Hearing instrument specialist" means "specialist in hearing instruments" as defined at KRS 334.010(9).

(10) "KCDHH" means the Kentucky Commission on Deaf and Hard of Hearing, as described at KRS 163.506

(11) "Physician" means a person.

(a) With a medical degree;

(b) Licensed by the state in which he or she practices medicine, and

(c) Recognized, by the state Board of Medical Licensure in the state in which the physician[~~he or she practices~~], as a specialist in:

1. Family practice;

2. General practice; or

3. Otolaryngology.

(12) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH Telecommunications Access Program.

(13) "Specialized telecommunications equipment" or "STE" means readily-available or emerging adaptive equipment that enables deaf, hard of hearing or speech-impaired individuals to access telecommunications services, such as:

(a) Telecommunication devices for the deaf,

(b) Amplifiers,

(c) Voice carry over telephones;

(d) Captioned telephones;

(e) Visual, audible, or tactile ring signal devices; and

(f) Wireless devices.

(14) "Speech-language pathologist" means a person licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment of speech-language pathology.

(15) "Specialized Telecommunications Equipment" or "STE" is defined by KRS 163.525(1)(a)

(16) "Telecommunications Access Line" means the transmission of auditory, visual, and typed communication via electronic air waves or hard wired methods

(17) "Telecommunications Access Program" is defined by KRS 163.525(1)(b).

Section 2. Processing System. (1) The KCDHH shall use accounting procedures consistent with Commonwealth accounting practices in compliance with applicable sections of the Model Procurement Code, KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with applicable provisions of the Model Procurement Code, KRS Chapter 45A, and shall be applied uniformly to applicants and vendors.

(3) The KCDHH Telecommunications Access Program accounts shall be audited on a regular basis by the Auditor of Public Accounts.

Section 3 Vendor and Recipient Participation (1) The vendor shall be responsible for complying with the provisions of the Model Procurement Code, as established in the contract between the vendor and KCDHH. The vendor shall:

(a) Mail or otherwise deliver the STE directly to the recipient's Kentucky residence; and

(b) Send the following to the KCDHH:

1. An itemized invoice with the recipient's name and STE model and serial number; and

2. A copy of the delivery receipt for the STE sent to the recipient.

(2) The vendor, in exchange for an itemized invoice and a copy of the delivery receipt, shall be paid by the KCDHH or a bank, pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(3) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.

(4) Ownership rights and responsibilities for the STE shall belong to the recipient, as evidenced by the recipient's copy of the delivery receipt. Equipment obtained under this program shall not

be sold, loaned, or otherwise transferred out of the possession of the originally-authorized recipient. Any [An] person who attempts to sell or who knowingly purchases stolen equipment shall be prosecuted to the fullest extent of the law.

(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment during the four (4) [~~five (5)~~] year warranty period. In order to have a malfunctioning STE repaired, the recipient shall:

1. Contact the KCDHH; and

2. Comply with the repair and maintenance procedures established in Section 5 of this administrative regulation.

(b) Each recipient shall:

1.[~~Purchase or lease a telephone,~~

2.] Assume responsibility for monthly maintenance of the telecommunications access line as described in 735 KAR 1:010; [~~Pay each monthly telephone bill~~]

3. Purchase batteries and paper for the STE[~~Specialized Telecommunications Equipment~~]; and

4. Pay for other general costs and supplies associated with the functions and use of the STE.

(c) A recipient shall be responsible for the loss of an STE received under the auspices of the KCDHH Telecommunications Access Program.

Section 4. Security. (1) The recipient shall notify the KCDHH within ten (10) working days if the equipment is lost or damaged

(2) If the equipment is stolen, the recipient shall

(a) Notify local police within thirty (30) days of the theft;

(b) Forward a copy of the police report to the KCDHH within ten (10) working days of the date the theft was reported, and

(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

Section 5. Maintenance and Repair Procedures (1) A recipient shall report equipment in need of repair to the KCDHH. Telecommunications Access Program staff shall inform the recipient of:

(a) The mailing address and telephone number of the manufacturer; and

(b) The purchase order number for the equipment.

(2) The recipient shall:

(a) Report the problem to the manufacturer;

(b) Ask that the manufacturer pay for shipping the defective equipment:

1. To the manufacturer's designated place of repair; and

2. Back to the recipient, once repaired.

(3) The contracted repair agent shall notify the recipient that the STE is repaired, or is not repairable, and shall provide verification of the transaction to the KCDHH. If the warranty period has ended, the recipient shall assume financial responsibility for repair of the equipment.

(4) A recipient shall notify the KCDHH immediately of a change of residential address

This is to certify that the Chair of the Kentucky Commission on the Deaf and Hard of Hearing has reviewed this administrative regulation, prior to its filing with the Legislative Research Commission, as required by KRS 163.525(5)

DR. PATRICIA FREEMAN, Chair
LIZ HILL, Executive Director

APPROVED BY AGENCY: April 1, 2009

FILED WITH LRC: April 7, 2009 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on administrative regulation 735 KAR 1:010 shall be held on May 22, 2009 at 10 a.m., at the office of the Kentucky Commission on the Deaf and Hard of Hearing, located at 632 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing within 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is submitted. 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 June 1, 2009. 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: Rowena Holloway, Internal Policy Analyst III, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, phone (502) 573-2604 (V/T), fax (502) 573-2604, email Row holloway@ky gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person. Liz Hill

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Telecommunication Access Program (TAP), administered by the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) was implemented in 1996 as a result of legislation enacted by the General Assembly in 1995 The TAP ensures equal access to telecommunications services by providing specialized telecommunications equipment (STE) to citizens of the Commonwealth who are deaf, hard of hearing, or speech impaired. This administrative regulation establishes the processing system for vendor participation in the TAP as well as outlining requirements for the security, maintenance and repair of the STE distributed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the provisions of KRS 163.525(5), which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute STE to any deaf, hard of hearing, or speech-impaired person qualified to receive the equipment at no additional cost beyond a single party telecommunication access line.

(c) How this administrative regulation conforms to the content of the authorizing statutes This administrative regulation confirms to the content of the authorizing statues by establishing the processing system for vendors, security, and the maintenance and repair of equipment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the processing requirements for vendors to distribute wireless telecommunication devices as well as outlining security, maintenance, and repair provisions of the system.

(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 will provide procedures for vendor participation in the distribution of wireless telecommunications devices through the TAP. The addition of wireless devices, such as pagers, to the distribution program will fulfill the unmet need of consumers for current technology necessary to access communications regardless of geographical location and will allow consumers to obtain prompt and accessible notification during disasters and weather related emergencies. The criteria for establishing and maintaining a vendor contract to distribute wireless devices is outlined in this amendment.

(b) The necessity of the amendment to this administrative regulation Per KRS 278 548, the Public Service Commission (PSC) has authority to determine the appropriate funding mechanism for the TAP. As a result of a petition request from the KCDHH, the PSC issued an order (Case No. 2007-0464), which expanded the funding base for the TAP to include wireless telecommunication providers statewide. This amendment is necessary to incorporate procedures for acquiring a vendor to distribute wireless telecommunication devices through the TAP and sets the standards for security, maintenance, and repair of equipment purchased by the TAP. Program costs will increase as a result of the addition of wireless devices to the program, but are fully funded by a surcharge on all telecommunication access lines throughout the state. Current staff will be utilized to process the new applications for specialized equipment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will allow the governing body to establish procedures for vendors of wireless devices necessary to provide equitable access to telecommunications services and allow

for establishment of procedures regarding security, maintenance and repair of specialized equipment.

(d) How the amendment will assist in the effective administration of the statutes: The Federal Telecommunications Act of 1996 was implemented to promote competition, reduce regulations, secure lower prices and higher quality services for telecommunications consumers and encourage the rapid deployment of new telecommunications technologies The number of households with residential telephone lines has decreased dramatically over the last 4 years, not only in Kentucky but nationwide. Wireless subscribers have increased substantially and that trend is expected to continue as many consumers substitute wireless service for landline service to meet their communication needs. Wireless devices can be used to alert individuals with hearing loss to an emergency situation or an impending disaster. Without such a device, a large portion of the 646,683 deaf and hard of hearing individuals in Kentucky may be unaware of impending danger and unable to respond during an emergency. Wireless devices can be utilized to communicate with first responders or emergency personnel on a one-to-one basis in situations where interpreters and captioning may not be available, to assist in providing equitable access as mandated by the Americans with Disabilities Act. To ensure that no legitimate need for telecommunication equipment goes unmet within the Commonwealth wireless devices must be distributed through the TAP. This amendment establishes a processing system for vendor participation, security and maintenance and repair of specialized equipment distributed to meet the needs of the citizens of the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Vendors who seek to do business with the Commonwealth are affected by this regulation. The TAP has had more than 12,000 applications since its implementation in 1995. There are 646,683 deaf, hard of hearing, or speech impaired consumers within the Commonwealth that could potentially be eligible to receive a wireless device through the TAP. Currently 6 vendors are partially supported by contract allocations to supply the equipment distributed by TAP and this amendment will add at least one additional vendor, potentially more. Individuals will benefit from the security, maintenance, and repair procedures outlined as requirements within this regulation. Organizations and state or local governments are not affected by this amendment, which pertains to specialized telecommunications equipment vendors.

(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: Vendors will profit from the sale of specialized equipment, as well as increase their consumer base, which in turn will boost a sagging economy. Consumers will benefit from requirements within this regulation regarding the security, maintenance, and repair of equipment distributed through the TAP.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Direct costs for the administrative operation of the TAP and procurement of specialized telecommunications equipment will be covered by the increase in restricted funds accrued from wireless providers after the June 1, 2009 effective date There will be no additional cost pertaining to the selection of a vendor to distribute wireless devices, or the procedures utilized to secure, maintain and repair the purchased equipment.

(b) On a continuing basis: There will be no additional cost for implementing this regulation on an ongoing basis as vendor contracts for equipment are processed on a designated timeframe and the selected vendor for wireless equipment will be added to that contract rotation. Continued indirect costs include time spent by the Internal Policy Analyst III to monitor and amend vendor contracts, estimated to be five percent of the total job responsibilities.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The PSC has authority to modify the funding mechanism for TAP as set forth within KRS 163 525 and holds an agreement with the KCDHH outlining responsibilities of both parties. Per the directive of PSC case # 2007-00464, effective June 1, 2009, the TAP will receive 2 cents per telecommunications access line to support procurement of specialized equipment through June 30, 2010. Effective July 1, 2010, the TAP portion of the surcharge reverts to one cent per telecommunications access line. Program funds will be used to administer provisions of the vendor contracts as outlined in 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 fees are charged to maintain vendors within the TAP as the program accrues sufficient funds to support the amendments to this regulation. Therefore, this regulation change does not impact fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly established or increased by this amendment as the TAP is funded by a surcharge on telecommunication access lines. The PSC order actually reduced the overall surcharge from nine cents imposed on landlines only to the new amount effective June 1, 2009 of four cents per access line, both wired and wireless

(9) TIERING: Is tiering applied? Tiering is applied in times of "fiscal constraint", which is defined as 75%of the TAP funds being disbursed or encumbered. Consumers who are deaf, hard of hearing, or speech impaired and have not previously received equipment are given first priority in times of fiscal constraint. If funds are available, consumers are permitted to reapply and receive new equipment once every 4 years Vendors will be asked to provide a 2-year warranty on wireless devices, which supports the estimated life of the equipment, and 4 years on standard equipment, which typically continues to be functional past the warranty period. Vendors must comply with all requirements of the contract per KRS Chapter 45A, Kentucky Model Procurement Code.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) operates the Telecommunications Access Program (TAP) as mandated by KRS 163 525 and provides specialized telecommunications equipment (STE) to deaf, hard of hearing, or speech impaired consumers. Professional audiologists, speech pathologists, and hearing instrument specialists, as well as agencies and organizations statewide, which provide support services to this population, will be positively impacted by referring consumers to the TAP for assistive equipment at no cost to the agency or the consumer. State and local governments will be positively impacted in that consumers requesting services will be able to utilize wireless devices to more equitably access communication with state and local governments. This administrative regulation amendment will have no direct fiscal impact on these entities, other than KCDHH. All costs associated with the operation of the TAP will be covered by restricted funds allocated to the program from the collection of the surcharge.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Kentucky statues at KRS 163.510, 163 525, 163.527, 278.548, and 278.5499 and provisions of KRS Chapter 13A. Kentucky regulations at 735 KAR 1.010 and 1:020. Federal mandates at 47 U.S.C. 225 and 42 U.S.C. 12101, including provisions of the Americans with Disabilities Act (ADA) and Section 504 (29 U.S.C 794) and Section 508 (29 U S.C. 794d) of the Rehabilitation Act of 1973, as amended.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Both revenues and expenditures for the TAP will increase per the number of wireless access lines contributing to the two cent surcharge, which becomes effective June 1, 2009 as a result of a petition filed by KCDHH with the Public Service Commission (PSC). Effective June 30, 2010, the portion of the surcharge allocated to the TAP reverts back to one cent per access line per KRS 278.5499. The

overall telecommunications surcharge will be reduced from the current 9 cents to 4 cents effective June 1, 2009, benefiting consumers' statewide and meeting requirements of Title IV of the ADA. No other state or local governments will be fiscally impacted by this regulation amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Based on the number of telecommunication access lines in Kentucky, it is estimated that the TAP will collect $750,000 during the first year while the 2 cents per access line is being allocated to the TAP.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Based on the number of telecommunication access lines in Kentucky, it is estimated that the program will collect $375,000 during the subsequent years if the TAP portion of the surcharge reverts back to one cent per telecommunications access line.

(c) How much will it cost to administer this program for the first year? With the inclusion of wireless devices in the TAP, it is estimated the full $750,000 collected from the surcharge will be required to administer the program and purchase the commodities (equipment distributed) for the program's consumers.

(d) How much will it cost to administer this program for subsequent years? With the inclusion of wireless devices to the TAP and the anticipated need for this kind of specialized equipment, it is estimated the $375,000 collected from the surcharge will be insufficient to administer the program and purchase the commodities (equipment distributed) for the program's consumers. If this is confirmed after the first year of operation under this amended regulation, the KCDHH will request that the TAP allotment of the surcharge remain at the 2 cents per telecommunications access line collected during the first year of operation. If that request is granted, KRS 278.5499 will be amended accordingly.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This administrative regulation is mandated to comply with the Americans with Disabilities Act (ADA) of 1990 Pub.L. No. 101-336 (42 U.S.C. 12101) pursuant to Title IV of the ADA (47 U.S.C. 225), the Federal Communications Commission (FCC) regulations enforcing the Telecommunications Accessibility Enhancement Act of 1988, which established the relay service, and the Rehabilitation Act of 1973, Section 504 (29 U.S.C. 794) and Section 508 as amended (29 U.S.C. 794d).

2. State compliance standards. This administrative regulation was promulgated pursuant to KRS 163.525, mandating implementation of an equipment distribution program to ensure equitable access to telecommunications for the deaf, hard of hearing, and speech impaired as established pursuant to KRS 278.548. The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) functions under a memorandum of agreement with the Public Service Commission for coordination and oversight of funding and operations to meet the objectives of KRS 278 5499. Procedures for application and distribution of equipment are defined in 735 KAR 1:010 and 735 KAR 1:020, in accordance with provisions of KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. (42 U.S.C. 12101) provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities including enforceable standards addressing this discrimination. (47 U.S.C. 225) mandates provision of telecommunications relay services (TRS) every day, 24 hours a day. TRS is defined as telephone transmission service that provides the ability for an individual who has a hearing or speech disability to engage in communication by any means of telecommunications access with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not ~~have a hearing~~ or speech disability to communicate. (29 U.S.C. 794) states that no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any executive agency or by the U.S. FCC. This includes removal of architectural, transportation or communication barriers and ensures that federal agencies provide accessibility to disabled individuals, in the development, procurement, maintenance, or use of electronic and information technology, unless an undue burden would be imposed on such an agency. In such case, an alternate means of accessing the data will be provided to the disabled individuals. (29 U.S.C. 794d) mandates new opportunities for people with disabilities to use telecommunications be made available and development of technologies that will help achieve accessibility are pursued. Agencies must give disabled members of the public access to information that is comparable to the access available to others.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment will not impose stricter requirements or additional or different responsibilities than mandated by federal requirements. Kentucky's Telecommunication Access Program (TAP) will better meet the needs of our deaf, hard of hearing and speech impaired consumers, by providing wireless technology. Collection of a surcharge on all telecommunications access lines throughout the Commonwealth will be sufficient to cover the costs incurred by the program, including procurement of equipment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.215, EO 2008-688[~~230.210-230.360~~]
STATUTORY AUTHORITY: KRS 230.215(2), 230.260, EO 2008-688
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the authority to promulgate administrative regulations prescribing conditions under which all horse racing is conducted. KRS 230.260 authorizes the authority to promulgate administrative regulations that regulate conditions under which thoroughbred racing shall be conducted in Kentucky and to establish safety standards for jockeys. EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the commission. This administrative regulation establishes the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a jockey, who has not ridden in a race previously, may ride in three (3) races before applying for a license as a jockey or apprentice jockey if:

(1) The person is a licensed stable employee, assistant trainer, or trainer with at least one (1) year of service with a racing stable;

(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship, as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions, to be permitted the probationary mounts;

(3) The starter has schooled the person in breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;

(4) The stewards determine that the person:

(a) Intends to become a licensed jockey;

(b) Possesses the physical ability to be a jockey; and

(c) Has demonstrated his ability to ride in a race without jeo-

pardizing the safety of horses or other jockeys in the race; and

(5) The person has prior oral or written approval of the stewards.

Section 2. Qualifications for License. In addition to the requirements applicable to licensees under 810 KAR 1:025, a holder of a license as a jockey or apprentice jockey:

(1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;

(2) Shall have served at least one (1) year with a racing stable;

(3) Shall have ridden in at least three (3) races; and

(4) Shall, if required by the stewards, to protect the health and safety of the jockey, other jockeys, the horses, and the welfare of the betting public provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey

Section 3. Amateur or Provisional Jockey. (1) An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, shall:

(a) Be approved by the stewards as to competency of horsemanship, as demonstrated by meeting the requirements in Section 1(2), (3), and (4)(b) and (c) of this administrative regulation;

(b) Be granted an amateur jockey's license; and

(c) Have his amateur status duly noted on the daily race program.

(2) A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. (1) Any person sixteen (16) years of age or older, who has not been licensed previously as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

(a) Ten (10) pounds until he has ridden five (5) winners;

(b) Seven (7) pounds until he has ridden an additional thirty-five (35) winners;

(c) If he has ridden a total of forty (40) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year; and

(d) If after one (1) year from the date of the fifth winner, the apprentice jockey has not ridden forty (40) winners, the applicable weight allowance shall continue for one (1) additional year, or until the 40th winning mount whichever occurs first.

(2)(a) After the completion of conditions in subsection (1) of this section, a contracted apprentice may claim three (3) pounds for one (1) year if riding horses owned or trained by his original contract employer if his contract has not been transferred or sold since his first winner.

(b) The original contract employer shall be the party to the contract who was the employer at the time of the apprentice jockey's first winner.

(c) Apprentice allowance shall not be claimed for a period in excess of two (2) years from the date of the rider's fifth winner unless an extension has been granted in accordance with subsection (4) of this section.

(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years.

(a) These contracts shall be.

1. Approved by the stewards;

2. Filed with the commission[~~authority~~]; and

3. Binding in all respects on the parties to the contract.

(b) An apprentice who has not entered into a contract pursuant to this subsection shall be given an apprentice jockey certificate.

(4) If an apprentice jockey is unable to ride for a period of seven (7) consecutive days or more because of service in the armed forces of the United States, physical disablement, attendance in an institution of secondary or higher education, restrictions on racing, or other valid reason, the commission[~~authority~~], upon recommendation of the stewards and after consultation with the racing entity which approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission[~~authority~~] may waive collection of an additional license fee.

Section 5. Rider Contracts. (1) All contracts between an employer owner or trainer and employee rider shall be subject to 810 KAR Chapter 1.

(2) All riding contracts for terms longer than thirty (30) days, and any amendments, cancellation, or transfer, shall be in writing with the signatures of the parties notarized, and shall be approved by the stewards and filed with the commission[~~authority~~].

(3) The stewards shall approve a riding contract and permit parties to participate in racing in this state if the stewards find that:

(a) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of the execution of the contract;

(b) The contract employer possesses the character, ability, facilities, and financial responsibility conducive to developing a competent race rider; and

(c) If it is a contract for an apprentice jockey, the contract provides for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from the date of execution.

Section 6. Restrictions as to Contract Riders. A rider shall not:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer; and

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. (1) Any rider not prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer.

(2) These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the commission[~~authority~~].

(3) Any rider employed by a racing stable on a regular salaried basis shall not ride against the stable which employs him.

(4) An owner or trainer shall not employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The fee to a jockey, in the absence of special agreement to the contrary, shall be as follows.

(a) Purse $599 and under: winning mount, $33; second place mount, $33; third place mount, $33; losing mount, $33.

(b) Purse $600 to $699: winning mount $36; second place mount, $33; third place mount, $33; losing mount, $33.

(c) Purse $700 to $1,499: winning mount, ten (10) percent of win purse; second place mount, $33; third place mount, $33, losing mount, $33.

(d) Purse $1,500 to $1,999: winning mount, ten (10) percent of win purse; second place mount, $35; third place mount, $33; losing mount $33.

(e) Purse $2,000 to $3,499: winning mount, ten (10) percent of win purse; second place mount, $45; third place mount, $40; losing mount, $38.

(f) Purse $3,500 to $4,999: winning mount, ten (10) percent of win purse; second place mount, $55; third place mount, $45; losing mount, $40.

(g) Purse $5,000 to $9,999: winning mount, ten (10) percent of win purse; second place mount, $65; third place mount, $50; losing mount, $45.

(h) Purse, $10,000 to $14,999. winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place

purse; third place mount, five (5) percent of third place purse; losing mount, $50.

(i) Purse, $15,000 to $24,999. winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $55.

(j) Purse, $25,000 to $49,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse, third place mount, five (5) percent of third place purse; losing mount, $65.

(k) Purse, $50,000 to $99,999: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $80.

(l) Purse, $100,000 and up: winning mount, ten (10) percent of win purse; second place mount, five (5) percent of second place purse; third place mount, five (5) percent of third place purse; losing mount, $105.

(2) A jockey fee shall be considered earned by a rider if he is weighed out by the clerk of scales, with the following exceptions:

(a) If a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race, the owner or trainer shall pay an appropriate fee to each rider engaged for the race,

(b) If a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, reasonable cause; or

(c) If a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or the commission[~~authority~~], after the result has originally been made official, the winning fee shall be paid to the jockey whose mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards due to circumstances under which a jockey could not reasonably be expected to be physically present at the required time, A rider shall not be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards or the clerk of scales due to circumstances under which a jockey could not reasonably be expected to ride; and upon arrival shall report to the clerk of scales his engagements. If a rider fails for any reason to arrive in the jockey room no later than one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. While a rider is outside of the jockey room, a rider shall not have contact or communication with any person other than an owner or trainer for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room to conduct specific business previously approved by the stewards so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and when weighing out, the rider shall declare overweight, if any

(2)(a) A rider shall not pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; and

(b) A rider shall not pass the scale with more than five (5) pounds overweight.

(3) A horse shall not be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, rider's safety helmet, and rider's safety vest shall not be included in a rider's weight.

Section 13. Wagering. A rider shall not place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all of these wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. (1) Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened.

(2) Each jockey shall wear:

(a) The cap and jacket racing colors registered in the name of the owner of the horse he is to ride;

(b) Stock tie;

(c) White or light breeches;

(d) Top boots;

(e) [~~Safety helmet that meets the standards set forth in "Standard Specification for Protective Headgear Used in Horse Sport and Horseback Riding, F1163-04a,~~

~~(f)~~] A safety vest that meets the standards set forth in "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, F1937-04; and

(f)[~~(g)~~] A number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program.

(3) A safety vest shall not weigh more than two (2) pounds.

(4) The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

(5) A jockey mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times The jockey shall be responsible for providing sufficient evidence that his or her helmet meets one of the following safety standards: American Society for Testing Materials (ASTM 1163), UK Standards (EN-1384 and PAS-015); or Australian/New Zealand Standard (AS/NZ 3838).

Section 15 Advertising (1) A jockey shall not wear advertising or promotional material of any kind (whether for a nonprofit or for-profit entity) on clothing within one (1) hour of or during a race, unless.

(a)1 a. The material advertises or promotes the Jockey's Guild in the form of the picture of a jockey's boot or the picture of a wheelchair, with no additional picture or logo;

b. The material is the National Thoroughbred Racing Association (NTRA) Permanently Disabled Jockey's Fund logo, with no additional picture or logo; or

c. The picture or logo has previously been approved by the current owner, association, and the stewards under the process set forth in this administrative regulation, and this approval is reflected in the commission's[~~Authority's~~] official records, and

2. The material complies with the size restrictions of subsection (2)(b) of this section; or

(b) The following criteria are met:

1. The material meets the advertising standards listed in subsection (2) of this section; and

2. The jockey obtains the written approval established in subsection (4) of this section.

(2) Advertising or promotional material displayed on jockey clothing shall:

(a) Not compete with, conflict with, or infringe upon sponsorship agreements applicable to the racing association race or to the race meet in progress, and

(b) Comply with the following size restrictions;

1. A maximum of thirty-two (32) square inches on each thigh of the pants on the outer side between the hip and knee and ten (10) square inches on the rear of the pant at the waistline at the base of the spine;

2. A maximum of twenty-four (24) square inches on boots and leggings on the outside of each nearest the top of the boot; and

3. A maximum of six (6) square inches on the front center of the neck area (on a turtleneck or other undergarment)

(3) A sponsorship shall not be permitted by a person or entity whose message, business reputation, or ongoing business activity may be considered as obscene or indecent to a reasonable person.

(4)(a) For advertising or promotional material addressed in subsection (1)(b) of this section, approval in writing of all three (3) of the following shall be required:

1. The managing owner of the horse, or the owner's duly authorized agent;

2. The licensed racing association, which shall grant approval if it reasonably determines the material meets the standards in subsection (2)(a) of this section; and

3. The stewards, who shall grant approval if they reasonably determine the material meets the standards in subsections 2(b) and (3) of this section.

(b) Written approval shall be evidenced by completion and return of the "Request to Wear Advertising and Promotional Materials." The form shall be completed and submitted to the stewards not later than the time of entry of the subject race.

(5) As a condition for approval of advertising or promotional material, either the owners, the stewards, or the licensed racing association may require a personal viewing of the proposed material as it is to be displayed, to determine that the requirements of this section are met.

(6) This administrative regulation shall not prohibit the sponsor of a licensed racing association race or race meeting from displaying advertising or promotional material on an association saddlecloth if it does not interfere with the clear visibility of the number of the horse.

(7) Advertising content other than that approved in this administrative regulation shall not be permitted

(8) This administrative regulation shall not infringe upon or limit the common law rights of a racing association to eject or exclude persons, licensed or unlicensed, from association grounds or to apply the association's internal rules regarding advertising.

Section 16. Viewing Films or Tapes of Races. (1) Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race.

(2) The posting of the film list shall be considered as notice to all riders whose names are listed to present themselves at the time designated by the stewards to view the patrol films or video tapes of races.

(3) Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

Section 17. Material Incorporated by Reference (1) The following material is incorporated by reference:

(a) [~~"Standard Specification for Protective Headgear Used in Horse Sport and Horseback Riding, F1163-04a";~~

~~(b)~~] "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, F1937-04" and.

(b)[~~(c)~~] "Request to Wear Advertising and Promotional Material", March 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission[~~Racing Authority~~], 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4 30 p.m.

(3) This material may also be obtained from the Kentucky Horse Racing Authority Web site at www.khrc.ky.gov [~~www.khra.gov~~]

ROBERT M. BECK, Jr., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: April 15, 2009

FILED WTH LRC: April 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 28, 2009 at 10 a.m., at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2009. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone: (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth restrictions and requirements regarding the participation of jockeys in horse racing.

(b) The necessity of this administrative regulation: The regulation is necessary to protect the health and safety of jockeys and thoroughbred horses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky. This regulation establishes restrictions and requirements concerning the activities of jockeys during thoroughbred race meetings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation gives detailed guidance as to what practices and equipment can and cannot be utilized by jockeys.

(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 provides updated provisions concerning the helmets required to be used by jockeys at locations under the jurisdiction of the Commission. The amendment allows the use of several helmets that provide adequate protection for jockeys.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that jockeys wear proper protective helmets at locations under the jurisdiction of the Commission.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 grants the Commission broad authority to promulgate regulations governing horse racing. This amendment addresses an important issue concerning jockey safety, the use of safety helmets.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further the goal of securing the safety and welfare of jockeys at locations under the jurisdiction of the Commission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 100 jockeys engaged in thoroughbred racing who are licensed by the Kentucky Horse Racing Commission. The jockeys will be required to comply with the new safety helmet rules.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Jockeys and companies manufacturing safety helmets will be required to conform to the new requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be imposed to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The welfare of jockeys and other riders will be enhanced by ensuring that proper safety helmets are worn at locations under the jurisdiction of the Commission.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning safety helmets apply equally to all participants in horse racing.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation will not impose additional costs upon any government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

810 KAR 1:026. Racing associations.

RELATES TO: KRS 230.215(2), 230.225(1), 230.260(3), EO 2008-688

STATUTORY AUTHORITY: KRS 230.215(2), 230.225(1), 230.260(3), (6), EO 2008-688

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.225(1), and 230.260(3) require the authority to promulgate administrative regulations establishing conditions governing horse racing. EO 2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to the commission. This administrative regulation establishes the requirements for racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track. (1) The grounds and facilities of an association shall be maintained in a manner that provides for the:

(a) Comfort and safety of patrons, employees, and other persons whose business requires their attendance; and

(b) Health and safety of horses that are stabled, or exercise, or entered to race at the association.

(2) The grounds and facilities of an association shall be:

(a) Neat and clean;

(b) Painted; and

(c) In good repair.

(3) An association shall have implements adequate to maintain a uniform track, weather conditions permitting.

Section 2. Results Boards, Totalizators Required. An association shall provide and maintain mechanically operated totalizators and electronic boards that show odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. (1) An association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip.

(2) An association shall have in attendance one (1) or more persons qualified to keep the starting gates in good working order whenever the gates are in use.

(3) An association shall provide for periodic inspections of the starting gates.

Section 4. Stabling. (1) An association barn and stall shall be:

(a) Constructed of fire-resistant material;

(b) Clean, sanitary, and equipped for adequate drainage; and

(c) Maintained in good repair.

(2)(a) Prior to the opening of a race meeting, the commission[~~racing authority~~] shall submit to the racing secretary a list of locations of approved off-track stabling facilities from which horses shall be permitted to race.

(b) The locations shall be considered association grounds.

Section 5. Stands for Officials. (1) An association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials.

(2) The stands and their locations shall be approved by the commission[~~authority~~].

(3) The floor of patrol judge stands shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings. An association shall have

(1) Red and white quarter poles;

(2) Green and white eighth poles; and
(3) Black and white 16th poles.

Section 7. Lighting. (1) An association shall provide and maintain flood lights that provide adequate illumination in the stable area and parking area.
(2) If an association conducts night racing, it shall provide adequate track lighting.

Section 8. Facilities for Stable Employees. (1) An association shall provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities, which shall include showers, toilets, and wash basins for stable employees.
(2) Personnel shall not be permitted to sleep in a stall or barn loft.

Section 9. Facilities for Jockeys. (1) An association shall provide and maintain adequate facilities for jockeys scheduled to ride each day.
(2) The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, and snack bar.

Section 10. Facilities for Commission[~~Authority~~]. (1) An association shall provide adequate office space for the commission[~~authority~~] on its grounds.
(2) An association shall provide the following to the commission[~~authority~~]:
(a) A season box, marked "Kentucky Horse Racing Commission[~~Authority~~]", of six (6) to eight (8) seats; and
(b) A number of parking places sufficient for the commission[~~authority~~] and commission[~~authority~~] staff.
(3) An association shall honor for access to preferred parking facilities and other areas on its grounds a commission[~~authority~~] or Association of Racing Commissioners International ring, lapel button, or automobile emblem.

Section 11. Sanitary Facilities for Patrons. An association shall, on every racing day, provide sanitary toilets and wash rooms, and free drinking water adequate for the number of patrons and persons having business at the association that comply with applicable statutes, administrative regulations, codes or ordinances.

Section 12. Manure Removal. (1) An association shall provide and maintain manure pits of the size and construction adequate to handle refuse from stalls.
(2) The contents of the manure pits shall be removed from the stable area as promptly as is possible.

Section 13. Photo Finish Cameras. (1) An association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races.
(2) One (1) of the photo finish cameras shall be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges the number of prints of finishes requested.
(3) An association shall maintain a one (1) year file of all photo finishes.

Section 14. Patrol Films or Video Tapes. (1) During a race meeting, an association shall provide and maintain personnel and equipment necessary to record and produce motion pictures or video tapes that clearly record each race from start to finish.
(2) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.
(3)(a) A film and video tape shall be:
1. Retained and secured by an association for at least one (1) year; and
2. Made available to the commission[~~authority~~] and stewards upon demand.
(b) Upon order of the stewards, a visual record of a race that has raised a question, dispute, or controversy shall be filed with the commission[~~authority~~]
(4) Films and video tapes shall be made available:
(a) For viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed; and
(b) To members of the press.

Section 15. Ambulances. (1) An association shall provide and maintain at least one (1) man-ambulance and one (1) horse-ambulance whenever horses are permitted to exercise or race.
(2) An ambulance shall be:
(a) Equipped;
(b) Manned,
(c) Ready for immediate duty; and
(d) Located at an entrance to the racing strip.

Section 16. (1) Except as provided by subsection (2) of this section, an association shall equip and maintain a first aid facility that is:
(a) Equipped with at least two (2) beds; and
(b) Attended by a licensed physician and registered nurse during race hours.
(2) An association shall not be required to maintain a first aid facility, if the association:
(a) Has an ambulance on standby on its premises during race hours; and
(b) Can transport an injured individual to a fully-equipped hospital emergency room in:
1. Five (5) minutes or less;
2. An ambulance manned by a certified paramedic and certified emergency medical technician.
(3) A paramedic provided pursuant to subsection (2) of this section shall be equipped with:
(a) Heart monitor and defibrillator;
(b) Cellular phone; and
(c) Airways intubation equipment.

Section 17. Track Kitchen. An association shall provide a track kitchen within the stable area, maintained in a clean and sanitary manner that complies with applicable statutes, administrative regulations, codes, or ordinances at all times horses are stabled on association grounds.

Section 18. Communication System. An association shall install and maintain in good working service a communication system between the stewards' stand and:
(1) Patrol judges;
(2) Parimutuel department;
(3) Starting gate;
(4) Public address announcer; and
(5) Clerk of the scales.

Section 19. Fire Prevention. (1) An association shall have a fire prevention and suppression program.
(2) The commission[~~authority~~] shall not approve the commencement of a race meeting, unless, within fifteen (15) days before commencement of the race meeting, the state or local fire marshal:
(a) Has inspected the association; and
(b) Certified that the association plant and stable area meets fire safety requirements.
(3) An association shall maintain a firefighting unit of trained personnel that has high-expansion foam fire extinguishers, and other equipment required by the local fire inspection authority.
(4) An association shall prohibit:
(a) Smoking in stalls, under shed rows, and in feed rooms;
(b) Open fires, oil or gas lamps in the stable area; and
(c) Locking of stalls occupied by horses.

Section 20. Association Security. (1) An association shall provide and maintain security services, night and day, in and about association grounds.
(2) An association shall furnish to the commission[~~authority~~] a report on any disturbances, drunkenness, or disorderly conduct committed by a person on association grounds.

Section 21. Security. (1) An association shall exclude from association grounds a person designated to be excluded by order of the

commission[~~authority~~] or stewards.

(2) An association shall implement security measures to protect a horse on association ground from being injured by being frightened or tampered with.

(3) An association shall exclude from the paddock area, race strip, and winner's entrance a person who:

(a) Does not have an immediate connection with the horses entered; and

(b) Is not a commission[~~authority~~] member, racing official, or accredited member of the news media.

Section 22. Vendors and Suppliers. (1) A vendor shall comply with procedures and requirements established by an association.

(2) An association shall not attempt to control or monopolize sales to owners, trainers, or stable employees.

(3) An association shall not grant a concession to a vendor of feed, racing supplies, or racing services.

(4) A vendor of horse feeds or medications shall file with the commission[~~authority~~] veterinarian a list of products which he proposes to sell, including a new preparation or medication.

(5) An association shall not permit the sale of an alcoholic beverage except beer within the stable area.

Section 23. Ejection or Exclusion From Association Grounds. (1) An association shall for probable cause eject or exclude from association grounds a person:

(a) Believed to be engaged in:

1. A bookmaking activity; or

2. Solicitation of bets; or

3. Touting.

(b) An association shall immediately submit a report on the ejection or exclusion from association grounds of a person who engaged in activity prohibited by paragraph (a) of this subsection to the:

1. Commission[~~Authority~~];

2. Stewards; and

3. Police.

(c) Who as a business or for compensation, either directly or indirectly:

1. Accepted anything of value to be wagered, or transmitted, or delivered for wager to a pari-mutuel wagering enterprise; or

2. Participated in the transaction; and

(d) Attempted to use tax exempt admissions credentials not issued to him by the association

(2) An association shall eject or exclude from its stable area a person who is not:

(a) Licensed to conduct an activity which requires his presence in the stable area;

(b) An accredited member of the news media;

(c) A guest of a licensed owner or trainer accompanied by the owner or trainer; or

(d) Accompanied by, and under the control and supervision of a:

1. Racing official;

2. Association security guard, or

3. Association public relations department representative.

(3)(a) A report of an ejection or exclusion from association grounds for any reason shall be made immediately to the commission[~~authority~~] and the stewards

(b) A report shall state the:

1. Name of person ejected or excluded;

2. Reasons for the ejection or exclusion, and

3. Facts relating to the ejection or exclusion.

Section 24. Ownership of Associations. An association shall file with the commission[~~authority~~] a revised list of persons whose identity is required by 810 KAR 1:025, Section 6(2), immediately upon transfer of a beneficial interest or control in the association.

Section 25. Plan of Association Grounds (1) An association shall file with the commission[~~authority~~] maps and plans of association grounds, showing:

(a) Structures;

(b) Piping;

(c) Fire hydrants;

(d) Fixed equipment,

(e) Racing strip, noting elevation as filled, drained, and gapped; and

(f) Composition of track base and cushion.

(2) An association shall file revised maps or plans of association grounds upon any material change.

Section 26. Attendance Report and Badge List Report; Tax Exempt Credentials. (1) An association shall file with the commission[~~authority~~] a copy of the "Race Track Pari-mutuel and Admissions Report" required by KRS 137.180 and 138.480.

(2) A tax exempt admission credential shall not be transferable.

Section 27. Financial Report. Within sixty (60) days after the close of its fiscal year, an association shall file:

(1) Three (3) copies of its balance sheet; and

(2) A comparison to the prior year.

Section 28. Horseman's Account and Horseman's Bookkeeper. (1) An association shall maintain a bank account that shall:

(a) Be separate from its other accounts;

(b) Entitled "horsemen's account",

(c) Contain sufficient funds to pay money owing to horsemen for:

1. Purses;

2. Stakes;

3. Rewards,

4. Claims; and

5. Deposits.

(2) Withdrawals from the horsemen's account shall be subject to audit by the commission[~~authority~~] at any time.

(3)(a) Except as provided by paragraph (b) of this subsection, purse money shall be available to earners with forty-eight (48) hours, dark days excluded, after the result of the race in which the money was earned has been declared official.

(b) The stewards shall order money withheld until final adjudication of a dispute over which persons are entitled to money.

(4)(a) Except for jockey fees, a deduction from purse money shall not be made, unless the deduction has been requested in writing by the:

1. Person to whom purse money is payable; or

2. Authorized representative of the person to whom purse money is payable.

(b) Whether or not a deduction request is made, at the close of a race meeting, the horsemen's bookkeeper in charge of the horsemen's account shall mail to an owner a duplicate of each record of a deposit, withdrawal, or transfer of funds that affects his racing account.

(5) The horsemen's bookkeeper in charge of the horsemen's account shall be bonded.

Section 29. Outriders. (1) An association shall employ at least two (2) outriders.

(2) An outrider shall.

(a) Escort starters to the post; and

(b) Assist in the returning of all horses to the unsaddling area.

(3) An outrider shall:

(a) Only lead a horse that has demonstrated unruliness; and

(b) Assist in the control of a horse that might cause injury to a jockey or others.

(4) Whenever horses are permitted on the racing strip for exercising or racing, an outrider shall be:

(a) Present on the racing strip;

(b) Mounted; and

(c) Ready to assist in the:

1. Control of an unruly horse; or

2. Recapture of a loose horse.

(5) When a person exercises a horse during training hours, or accompanies a horse to the starting gate during racing hours, he shall wear a protective helmet and a safety vest that meet the "Standard Specification for Protective Headgear Used in Horse Sports and Horseback Riding, January 10, 2000", and the "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, November 1998" which are standards of the American Society for Testing and Materials (ASTM), F1163-00 and F1937-98, respectively.

Section 30. A person mounted on a horse or stable pony at a location under the jurisdiction of the commission shall wear a properly secured safety helmet at all times. The person shall be responsible for providing sufficient evidence that his or her helmet meets one (1) of the following safety standards: American Society for Testing and Materials (ASTM 1163), UK Standards (EN-1384 and PAS-015), or Australian/New Zealand Standard (AS/NZ3838).

Section 31. Valets. (1) An association shall employ a number of licensed valets sufficient to attend each rider on a day's racing program.

(2) A valet shall be under the immediate supervision and control of the clerk of scales.

(3) A rider shall not employ a valet or be attended by a person other than the valet assigned to him by the clerk of scales

(4) A valet shall not be assigned to the same rider for more than two (2) consecutive racing days.

(5) A valet shall:

(a) Be responsible for the care and cleaning up of the apparel and equipment of his assigned rider;

(b) Ensure his rider has the proper equipment and colors for a race;

(c) Present the proper equipment and attend the saddling of his rider's mount; and

(d) Attend the weighing out of his rider.

(6) A valet or other jockey room attendant shall not place a wager, directly or indirectly, on races run while he serves as a valet for himself or another.

(7)(a) An association shall provide uniform attire for valets.

(b) A valet shall wear the attire provided by an association whenever he performs his duty within public view

Section 32 [~~31~~] Minimum Purse and Stakes Values. (1) An association shall not program or run any race for which the purse is less than $2,000 in cash, without special permission of the commission[~~authority~~].

(2) An association shall not program or run a stakes race the added value of which is less than $10,000 in cash added by the association to stakes fees paid by owners.

(3) The minimum cash amounts paid by the association shall be exclusive of.

(a) Nomination;

(b) Eligibility;

(c) Entrance;

(d) Starting fees;

(e) Cash awards,

(f) Premiums;

(g) Prizes; or

(h) Objects of value.

Section 33 [~~32~~] Maximum Number of Races. An association shall not program or run more than nine (9) races on a racing day without permission of the commission[~~authority~~].

Section 34 [~~33~~] Two (2) Year Old Races. Beginning on March 1 of each year, an association shall program in the conditions book at least four (4) two (2) year old races each week.

Section 35 [~~34~~] (1) Exculpatory clauses Stall applications, entry forms, condition books, and other agreements between persons or entities licensed by the Kentucky Horse Racing Commission[~~Authority~~] regarding the stabling of horses, the racing of horses, the training of horses or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licensed associations, shall not contain provisions which absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury or damage caused or contributed to by the acts or omissions of any licensee or its agents or employees, except for:

(a) Ordinary negligence which causes or contributes to loss, injury or damage to horses while on the premises of a licensed association; and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by the licensed association. Subject to the above exceptions, all licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. A licensee shall not attempt to limit liability of any person or entity for gross negligence or intentional wrongdoing.

(2) Constructive notice to and consent of licensees. All persons licensed by the Kentucky Horse Racing Commission[~~Authority~~] shall be deemed, as a condition of licensure, to have notice of and to have consented to exculpatory provisions, which comply with the limitations set forth in this administrative regulation, included in agreements between licensees and in conditions of racing established by a licensed association. Exculpatory provisions which exceed the limitations set forth in this administrative regulation shall be void and unenforceable in their entirety.

(3) Model provision. The following provision shall be deemed to comply with the limitations set forth in this administrative regulation: All Kentucky Horse Racing Commission[~~Authority~~] licensees, including but not limited to the host association, owners, trainers, jockeys, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in these activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training, and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless and covenant not to sue all other licensees so participating for:

(a) Ordinary negligence which causes or contributes to loss, loss of use, injury or damage to horses while on the premises of (name of licensed association); and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by (name of licensed association), whether arising from alleged acts or omissions of a licensee and its agents or employees, the condition of the premises of (name of licensed association) or any other cause. Except as provided above, all licensees participating in racing, training and related activities at (name of licensed association) shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law.

Section 36[~~35~~] Material Incorporated by Reference. (1) [~~The following material is incorporated by reference:~~

~~(a) "Standard Specification for Protective Headgear Used in Horse Sports and Horseback Riding, January 10, 2000";~~

~~(b)~~] "Standard Specification for Body Protectors Used in Horse Sports and Horseback Riding, November 1998", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission[~~Authority~~], 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4 30 a m.

(3) This material may also be obtained from the Kentucky Horse Racing Commission Web site at www khrc ky gov.

ROBERT M. BECK, JR., Chairman
ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: April 15, 2009

FILED WITH LRC. April 15, 2009 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 28, 2009 at 10 am, at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Commission in writing by 5 working days prior to the hearing, of their intent to attend If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made 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 June 1, 2009. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John Forgy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements and restrictions on the conduct of a horse race meeting by an association.

(b) The necessity of this administrative regulation: The regulation is necessary to protect the regulate the conduct of racing associations, and to ensure that an association conducts a horse race meeting with adequate regard for the health and safety of participants, horses, and the public.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 grants the Kentucky Horse Racing Commission the authority to promulgate regulations governing the conduct of horse racing in Kentucky. This regulation establishes restrictions and requirements concerning the conduct of horse race meetings by racing associations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation gives detailed guidance as to the requirements racing associations must satisfy to conduct a horse racing meeting. This includes the facilities available and the provision of medical services.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides updated provisions concerning the helmets required to be used by persons at locations under the jurisdiction of the Commission, including racing associations. The amendment allows the use of several helmets that provide adequate protection.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that persons mounted upon horses and ponies wear proper protective helmets at locations under the jurisdiction of the commission.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 grants the commission broad authority to promulgate regulations governing horse racing. This amendment addresses an important issue concerning riding safety, the use of safety helmets.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further the goal of securing the safety and welfare of persons riding horses and ponies at locations under the jurisdiction of the commission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is difficult to estimate the number of persons involved, but undoubtedly several hundred licensees and other persons will be required to comply with the helmet rule in the Commonwealth. Jockeys and exercise riders are accustomed to wearing helmets, but some trainers may not be. However, numerous states in the United States now require trainers to wear safety helmets while mounted.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons riding horses and ponies at locations under the jurisdiction of the commission will be required to conform to the new requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No costs will be imposed to comply with this amendment, except for the cost of procuring helmets. However, this is a routine expense for many participants in horse racing such as jockeys and exercise riders. Some trainers are not in the habit of wearing helmets, but many states in the US now require trainers to wear helmets.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The welfare of jockeys and other riders will be enhanced by ensuring that proper safety helmets are worn at locations under the jurisdiction of the commission. (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? No tiering is applied. The rules concerning safety helmets apply equally to all participants in horse racing who are mounted on grounds under the jurisdiction of the Kentucky Horse Racing Commission.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No government agencies will be impacted except the Kentucky Horse Racing Commission, which regulates horse racing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The regulation will not impose additional costs upon any government agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130, EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department [~~office~~], after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

Section 1. Definitions. (1) "ABS" means acrylonitrile-butadiene-styrene pipe.

(2) "APML" means the "Approved Parts or Materials List."

(3) "ASTM" means American Society for Testing Materials.

(4) "Code" is defined by KRS 318 010(11).

(5) "Committee" means the State Plumbing Code Committee.

(6) "Department[~~Office~~]" means the Department [~~Office~~] of Housing, Buildings, and Construction.

(7) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(8) "Person" is defined by KRS 318 010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) A part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) A part or material shall not be used in a drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department [~~office~~] as being equal to or better than other similarly approved items for inclusion in the APML. The APML may specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department [~~office~~].

(b) A hearing shall be held before the committee if requested by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department [~~office~~], the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular department [~~office~~] hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department [~~Office~~] of Housing, Buildings, and Construction, 101 Sea Hero Road, Frankfort, Kentucky 40601-5405.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been reviewed by the Kentucky Plumbing Code Committee and approved by the Office and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(g) Dual flush water closets by Caroma, USA. The water closets shall use eight-tenths (.8) gallons for the short flush cycle and one and six-tenths (1.6) gallons for the full flush cycle.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) [~~Sewage ejector pit eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by A. K. Industries.~~

~~(e)~~] Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(e)[~~(f)~~] Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(f)[~~(g)~~] Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(g)[~~(h)~~] Electric Drain System as manufactured by Myers for light commercial and household usage.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Bnte-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirements that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater, which shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130, REU-V2520 FFU-US, REU-V2520 FFUC-US, REU-V2020W-US, REU-V2020WC-US, and REU-V1616W-US pressure type, which shall be equipped with an approved temperature and pressure relief valve.

6 Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater, which shall be equipped with an approved temperature and pressure relief valve.

8 International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10 Chronomite Laboratories, Inc. - instantaneous water heater, which shall be equipped with an approved temperature and pressure relief valve.

11. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

12. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc

13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP, which shall be equipped with an approved temperature and pressure relief valve.

14. Ariston electric water heaters, model numbers P-15S and P-10S, which shall be equipped with an approved temperature and pressure relief valve.

15. Vaillant Corporation gas fired point of use water heater.

16. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

18. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208, #180/240; #153/208; #153/240; #183/208; #183/240, #183/480 and #C183/480.

19. Hot Aqua Instantaneous Tankless Electric Water Heaters, Model Numbers, 18/125PC, 24/125PC, 24/120, 32/120, 24/240, 36/240, 48/240, 59/240, 70/240, 24/208, 35/208, 46/208, 60/208, 28/277, 42/277, 55/277, 69/277, 24/120-P, 59/240-P, 46/208-P, 55/277-P, 18/125PC and 24/125PC. This product shall not be approved for supplying hot water for showers.

20. Stiebel Eltron Tankless Water Heater. Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories and sinks.

21. Bosch Aqua Star tankless water heater. Models 125X, 125B, 125S, 125BS, 125FX and 38B. All models shall be installed with temperature and pressure relief valves

22. Controlled Energy Corporations "Powerstream" tankless water heater.

23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gallon models.

24. Powerstar PS19T and PS28T Electric Instantaneous Water Heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valves.

25. Aquastar AQ240 FX (LP, NG) gas fired instantaneous water heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valve.

26. S.E.T.S. Tankless Water Heater Models: #220, #180, #165 and #145 to be installed with temperature and pressure relief valve.

27. Rinnai Continuous Flow Water Heaters: Models 2532FFU(-C), 2532W(-C), 2532FFU and 2424W(-C) all requiring an approved pressure and temperature relief valve.

28. Noritz American Corporation Tankless, Instantaneous Water Heater Models· N-042, N-063 to be installed with temperature and pressure relief valve.

29. Takagi Industrial Company USA, Inc., Instantaneous Water Heaters, Models· T-KLS; T-K JR; T-K2; T-KD20 to be installed with temperature and pressure relief valve.

30. Envirotech Systems ESI 2000 Series Tankless Water Heaters, all requiring an approved pressure and temperature relief valve.

31. Quietside Instantaneous Water Heater Models: QVW8 - 100, 120, 175. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees.

32. Seisco Residential Tankless Water Heaters Model. RA 05, RA 07, RA 09, RA 11, RA 14, RA 18, RA 22 and RA 28. All models shall be equipped with an approved temperature and pressure relief valve.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G

and SI-103-100G with PVC solvent connections.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc of St. Charles, IL.

(f) Grease Traps U.S A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-06 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25)(a) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company, which shall have a three (3) inch vent and alternate additional waste openings shall be located in the pump chamber above the top of the base chamber.

(b) Hydromantic JB-1 System as manufactured by Hydromantic Pumps, Inc.

(26) Exemplar Energy garden solar water heater.

(27) ProSset systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. Proset E-Z flex coupling shall be approved for similar or dissimilar materials.

(28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Ste-Croix.

(c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc.

(29) Clamp-All Corporation Pipe Coupling Systems shall be approved size for size on dissimilar materials on new or existing installations. The use of Snap-All Increaser/Reducer transition bushings shall be included in this approval.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" shall be approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers.

(33)(a) Femco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(b) Femco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe shall have been tested for the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building.

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer.

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line.

(40)(a) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations.

(b) Flo-Bowl Waxless Leakless Toilet System as manufactured by Flo-Bowl Systems Inc.

(41)(a) Conbraco 78-RV Series In-Line Water Heater Shut-Off Thermal Expansion Control Valve preset at 125 psi to relieve thermal expansion

(b) Watts Regulator BRV Expansion Relief Valve to relieve thermal expansion

(42) Plastic Productions PVC "Quick Stub" approved as a solvent weld transition between tubular PVC and schedule 40 PVC.

(43) HubSett In Line Test Coupling: PVC and ABS test couplings produced by HubSett Manufacturing Inc. for testing soil waste and vent systems.

(44) Viega/Ridgid ProPress System: Copper press fittings for joining copper water tubing and using an elastomeric o-ring that forms the joint. The fitting shall be made by pressing the socket joint under pressure in accordance with the manufacturer's installation requirements. Approved for pipe sizes one-half (1/2) inch through four (4) inch for above slab installations only.

(45) TRIC Trenchless Systems for replacement sewers in four (4) inch and six (6) inch sizes. A video camera tape of the existing sewer shall be made to determine proper alignment. After the installation is complete, another tape shall be submitted to ensure that the installation was successful. The sewer shall be tested according to 815 KAR 20:150. The interior heat fusion bead shall be removed to provide a smooth surface with no obstruction.

(46) Envirovac Inc.: Evac Vacuum Systems Condensate Collection System approved for condensate collection and the discharge from lavatories only.

(47) Macerating Systems from Sanitary-for-All, consisting of a sump with a macerating pump, with or without a macerating toilet. The sump shall be air tight and provided with a minimum one and one-fourth (1 1/4) inch vent. These systems shall be installed in accordance with the manufacturer's recommendations and shall not be used as a primary means of waste disposal.

(48) Rhino Wet Waste Interceptor manufactured by Ecosystems Inc. to be used as a prefiltration of wet wastes before discharging to a grease trap or interceptor.

(49) Quick Snap Multi Level Flange as manufactured by Jett Plumbing Products, Inc.

(50) Sioux Chief Manufacturers Stainless Steel Swivel Ring Closet Flange.

(51) Service Weight and No-Hub Cast Iron Pipe and Fittings furnished by DWV Casting Company complying with ASTM A74, A888 and CIPI 301-00.

(52) American Pipe Lining, Inc. APL 2000, which is an epoxy lining used in restoring water distribution systems. The use of APL 2000 shall be subject to the following conditions:

(a) A plumbing construction permit shall be required;

(b) Installation shall be by a licensed plumber;

(c) Water quality shall be tested before and after each project; and

(d) A water distribution system treated with APL 2000 shall be clearly marked on all exposed piping and water heater with the following notice: "FLAMELESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPING SYSTEM".

(53) Base Products Corporation:

(a) Water powered pump: basepump. Each model shall:

1. Be installed with a reduced pressure principle backflow preventer with copper piping only;

2. Be approved for groundwater removal only; and
3. Require incoming water pressure of 50 psi to operate.
(b) Battery back-up pump: hydropump.
(54) Perma-Liner Industries, Inc, Lateral Lining System.
(a) This system shall be approved for pipe sizes three (3) inches through eight (8) inches for interior and exterior installations.
(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required by 815 KAR 20.150, Section 4(2) or (3).
(c) Exterior applications shall be videoed before and after and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).
(d) A permit shall be obtained prior to an exterior or interior application.
(55) Stainless steel piping system for potable water applications manufactured by Victaulic for above ground applications only
(56) Wallgate Classic Model CME recessed and molded handwasher/dryer.
(57) MaxLiner.
(a) This system shall be approved for pipe sizes three (3) inch through ten (10) inch for interior and exterior installations.
(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required in 815 KAR 20:150, Section 4(2) or (3).
(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6).
(d) Permits shall be required for both interior and exterior applications.
(58) Nuflow Technologies Inc., Nuflow System.
(a) This system shall be approved for pipe sizes one and one-half (1 1/2) inch through twelve (12) inch for interior and exterior installations.
(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required in 815 KAR 20:150, Section 4(2) or (3)
(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20 150, Section 4(6).
(d) Permits shall be required for both interior and exterior applications.
(59) Schluter Shower System for waterproofing tiled shower installations installed per manufacturer recommendations.
(60) WATACO Manufacturing Watco Flex and Watco Flex 900 Innovator tub waste and overflow.
(61) J.R. Smith MFG. CO. THE BOSS TEE Series 4505 cleanout tee.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary Public
APPROVED BY AGENCY. April 12, 2009
FILED WITH LRC April 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes an "approved parts and materials list" containing the parts and materials that have been approved for use in Kentucky.
(b) The necessity of this administrative regulation: To remove language that is conflicting with other plumbing regulations.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to add parts and materials to be used within the state.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will remove language that conflicts with other plumbing regulations.
(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: It will delete the reference to sewage ejector in this regulation.
(b) The necessity of the amendment to this administrative regulation: To delete conflicting language.
(c) How the amendment conforms to the content of the authorizing statutes: It will delete language that conflicts with other regulations.
(d) How the amendment will assist in the effective administration of the statutes: Will assist the department and plumbers in clarification of the language.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Plumbers and plumbing inspectors from the installation and inspection standpoint.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Plumbers that install plumbing will need to comply with the approved parts and materials list for projects within the Commonwealth. Plumbing inspectors are to ensure that parts and materials used are approved and listed in the approved parts and materials list
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is associated with this amendment.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Plumbing work in the Commonwealth will utilize consistent materials and parts as recommended by the Kentucky Plumbing Code Committee.
(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 implementation and enforcement of this administrative regulation: No funding is associated with the amendment.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.
(9) TIERING: Is tiering applied? No tiering is applied as this amendment deletes conflicting language.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Plumbers and plumbing inspectors will be impacted in that this definition is deleted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Statutory authority for this regulatory amendment is found in KRS 318.130.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect This amendment will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulatory amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation amendment removes conflicting language within the plumbing code.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:060. Quality and weight of materials.

RELATES TO: KRS 318.130, 318.150

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130, EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department [~~office~~], after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the quality and weight of material. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation identifies and publishes the manufacturer's specification number for the quality and weight of material that shall be used in the installation of plumbing systems and establishes minimum specifications for the intended use.

Section 1. Definition of Terms. (1) "ABS" means acrylonitrile-butadiene-styrene.

(2) "ASSE" means American Society of Sanitary Engineers and copies of specifications identified in this administrative regulation may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(3) "ASTM" means American Society for Testing and Materials and copies of specifications identified in this administrative regulation may be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(4) "Drain pipe" means any pipe which carries wastewater or waterborne wastes in a building drainage system.

(5) "Drainage system" means all the piping within public or private premises which conveys sewage, rain water or other liquid wastes to a point of disposal and shall not include the mains of a public sewer system or a private or public sewage treatment or disposal plant.

(6) "DWV pipe" means drain, waste and vent piping, including aluminum, as used in common plumbing practice.

(7) "Lead" means solders and flux containing more than two-tenths (0.2) percent lead and pipes and pipe fittings containing more than eight (8.0) percent lead.

(8) "Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste and vent pipes; and sanitary and storm sewers and building drains; including their respective connections, devices and appurtenances within a building or premises.

(9) "Potable water" means water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the Public Health Service Drinking Water Standards or the administrative regulations of the public health authority having jurisdiction.

(10) "PVC" means polyvinyl chloride.

(11) "Stack" means any vertical line of soil, waste, vent, or inside conductor piping, except vertical vent branches which do not extend through the roof and which pass through less than two (2) stories before being reconnected to a vent stack or stack vent.

(12) "Trap" means a fitting or device which provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or wastewater.

(13) "Vent system" means a pipe or pipes installed to provide a flow of air to or from a drainage system, or to provide a circulation of air within the system to protect trap seals from siphonage and back pressure.

(14) "Waste pipe" means a pipe which conveys only waste.

Section 2. Materials, Quality of. The material used in a drainage or plumbing system or part of a system shall be free of defects.

Section 3. Label, Cast or Stamped. Each length of pipe, fitting, trap, fixture and device used in a plumbing or drainage system shall be stamped or indelibly marked with:

(1) The weight or quality; and

(2) The maker's mark or name (manufacturer's specification number).

Section 4. Vitrified clay pipe, concrete pipe, truss pipe and extra heavy SDR 35 sewer piping shall be produced and labeled and used only as follows:

(1) Vitrified clay pipe, ASTM C-700 [~~C-200~~].

(2) Concrete pipe, ASTM C-14

(3) Truss pipe, ASTM D-2680[~~-74~~] Solid wall truss pipe, ASTM D2751, [~~D-2751-74~~]

(4) Extra heavy SDR 35 sewer piping, ASTM D-3033-74 and D-3034-74.

Section 5. Cast-iron Pipe. (Hub and Spigot and No-hub). (1) Extra heavy. Extra heavy cast-iron pipe and fittings shall be produced and labeled as ASTM A74[~~-82~~].

(2) Service-weight. Service-weight cast-iron pipe and fittings shall be produced and labeled as ASTM A74 and ASTM C1563[~~-82~~].

(3) No-hub cast-iron and fittings ASTM 888 and CISPI 301.

(4) No-hub couplings ASTM C1277, C564, C1563, and CISPI 310.

(5) Coating Cast-iron pipe and fittings for underground use shall be coated with:

(a) Asphaltum;

(b) Coal tar pitch; or

(c) A coating produced and labeled as ASTM A743/A743 [~~A-174~~].

Section 6. Wrought-iron Pipe. All wrought-iron pipe shall be

produced and labeled with the latest ASTM "specifications for welded wrought iron pipe."

Section 7. Mild-steel Pipe. Steel pipe shall be produced and labeled with the latest ASTM "specifications for welded and seamless steel pipe."

Section 8 Brass pipe; Copper Pipe; and Brass Tubing. Brass pipe, copper pipe and brass tubing shall be produced and labeled with the latest specifications of ASTM for "brass pipe, copper pipe, and brass tubing, standard sizes."

Section 9. [~~Aluminum Drain, Waste and Vent (DWV) Pipe with End Cap Components. Aluminum drain, waste and vent pipe with end cap adapters shall be produced and labeled as ASSE Specification No. 1045.~~

~~Section 10~~] Borosilicate Pipe, Plastic Pipe, Stainless Steel Tubing, Polyethylene Pipe and Polypropylene Pipe. (1) Borosilicate pipe. Borosilicate pipe shall be produced and labeled with the latest ASTM specifications.

(2) Plastic pipe. All plastic piping used in a drainage, waste and vent system shall be:

(a) Schedule 40 or 80, Type 1, Grade 1, polyvinyl chloride produced and labeled as ASTM D1784 [~~D 1784-75~~];

(b) Cellular core PVC produced and labeled ASTM F-891;

(c) Schedule 40 or 80 acrylonitrile-butadiene-styrene produced and labeled as ASTM D2661 [~~D 1788-73~~]; or

(d) Cellular core ABS produced and labeled as ASTM F-628.

(3) Pipe and fittings shall be produced and labeled in accordance with the provisions of ASTM-D-2665[~~-76~~], as amended, for PVC and ASTM-D-2661[~~-99~~] for ABS, and both shall bear the National Sanitation Foundation seal of approval.

(4) Copies of National Sanitation Foundation specifications for the manufacturer of products identified in this administrative regulation may be obtained by writing the National Sanitation Foundation (NSF), 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106.

(5) All pipe and fittings shall bear the ASTM designation together with the NSF seal, the manufacturer's identification and the size.

(6) The use of plastic pipe and fittings (PVC or ABS) shall be restricted to buildings if the soil or waste and vent stack do not exceed forty-five (45) feet in height, beginning at the floor or slab in which the soil or waste and vent stack first penetrates the floor or slab and through the vertical distance to its terminus through the roof of the building.

(7) Stainless steel tubing.

(a) Stainless steel tubing for hot and cold water piping shall be Grade H produced and labeled as ASTM A268/268M[~~-68~~].

(b) Stainless steel tubing for the soil, waste and vent system shall be either Grade G or H produced and labeled as ASTM A268/268M [~~A-268-68~~].

(8) Polyethylene pipe. Polyethylene pipe used in acid waste systems shall be produced and labeled as ASTM D-1204[~~-62T~~].

(9) Polypropylene pipe. Polypropylene pipe used in acid waste systems shall be produced and labeled as ASTM D-4101 [~~D-2146-65T~~] or ASTM F-1412.

Section ~~10.~~ [~~11.~~] Lead Pipe, Diameter, Weights. (1) Lead soil, waste and vent pipe shall be produced and labeled as Federal Specifications WW-P-325, and shall not be lighter than the following weights:

Size Inside Diameter Inches	Commercial Designation "D" or "XL"		Wall Thickness Inches	Weight Pounds	Per Foot Ounces
1 1/2	D	XL	0.138	3	8
2	D	XL	0 142	4	12
3	D	XL	0.125	6	0
4	D	XL	0.125	8	0

(2) Lead bends and lead traps. All lead bends and lead traps shall be of the weight known as extra heavy (XH) and shall have at least one-eighth (1/8) inch wall thickness

Section 11. [~~12.~~] Integral Flashing. If a roofing system requires integral flashing, a flashing material, which is part of the manufactured roofing system and required by the roofing manufacturer to guarantee or warranty the roofing system, shall be used

Section 12. [~~13~~] Sheet Lead. Sheet lead for a shower pan shall not weigh less than four (4) pounds per square foot and shall not weigh less than two and one-half (2 1/2) pounds per square foot for vent pipe flashings.

Section 13. [~~14.~~] Sheet Copper or Brass Sheet copper or brass shall not be lighter than No. 18 B & S. gauge, except local and interior ventilating pipe shall not be lighter than No. 26 B. & S. gauge.

Section 14 [~~15~~] Threaded Fittings. (1) A plain screw fitting shall be either cast-iron, malleable iron, or brass of standard weight and dimension.

(2) A drainage fitting shall be either cast-iron, malleable iron, or brass, with smooth interior waterway, with threads tapped out of solid metal.

(3) A cast-iron fitting used in a water supply distribution shall be galvanized.

(4) A malleable iron fitting shall be galvanized.

Section 15. [~~16.~~] Caulking Ferrules. A caulking ferrule shall be of red brass and shall be in accordance with the following table:

Pipe Sizes Inches	Inside Diameter Inches	Length Inches	Minimum Weight Each
2	2 1/4	2 1/2	1 lb. 0 oz.
3	3 1/4	4 1/2	1 lb 12 oz.
4	4 1/4	4 1/2	2 lb. 8 oz.

Section 16. [~~17.~~] Soldering Nipples A soldering nipple shall be recessed red cast brass, iron pipe size. If cast, they shall be full bore and of minimum weight.

Section 17. [~~18~~] Floor Flanges for Water Closets and Service Sinks or Similar Fixtures. (1) A floor flange shall either be:

(a) Hard lead;

(b) Brass;

(c) Cast iron;

(d) Galvanized malleable iron;

(e) ABS; or

(f) PVC.

(2) A hard lead or brass flange shall not be less than one-eighth (1/8) inch thick.

(3) Cast iron or galvanized malleable iron shall:

(a) Not be less than one-fourth (1/4) inch thick; and

(b) Have a two (2) inch caulking depth.

Section 18. [~~19~~] Use of Lead. Lead shall not be used in the installation or repair of a public or private water system providing potable water for human consumption.

Section 19. [~~20~~] New Materials. (1) Materials other than those specified in this administrative regulation shall be prohibited unless the material is specifically approved by the State Plumbing Code Committee and the Department [~~Office~~] of Housing, Buildings, and Construction as being equal to or better than the material specified in the State Plumbing Code.

(2) It shall be the responsibility of any person or company seeking the approval of a material not included in this code to prove to the satisfaction of these agencies that the material is equal to or better than the material which it is intended to replace.

(3) Procedural requirements for approval of new parts and materials are set forth in 815 KAR 20:020.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary Public
APPROVED BY AGENCY: April 12, 2009
FILED WITH LRC: April 15, 2009 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on

May 26, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation identifies and publishes the manufacturer's specification number for the quality and weight of material that shall be used in the installation of plumbing systems and establishes minimum specifications for the intended use.

(b) The necessity of this administrative regulation: Deletes standards that no longer exist and updates existing standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to identify and publish the manufacturer's specification number for the quality and weight of material used in plumbing installations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It deletes standards that no longer exist and updates existing standards.

(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: Deletes standards that no longer exist and updates existing standards.

(b) The necessity of the amendment to this administrative regulation: To delete non-existent standards and update existing standards.

(c) How the amendment conforms to the content of the authorizing statutes: It will delete those standards that no longer exist and update the existing standards

(d) How the amendment will assist in the effective administration of the statutes: Will assist the department and plumbers in utilizing the current standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Plumbers and plumbing inspectors who must comply with parts and materials approved in the State Plumbing Code.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Plumbers and inspectors must be certain that all materials used in plumbing projects are compliant with the approved parts and materials list

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Plumbing work in the Commonwealth will utilize consistent weights and quality of materials as recommended by the Kentucky Plumbing Code Committee.

(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 implementation and enforcement of this administrative regulation: No funding is associated with the amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No tiering is applied as this amendment deletes conflicting language.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors will be affected by this amended regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 318.130.

4 Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulatory amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation relates to the deletion of standards that no longer exist and updates existing standards.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:070. Plumbing fixtures.

RELATES TO: KRS 318.010, 318 015, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130, EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department [office], after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing,

including the kind, type and quality of plumbing fixtures to be used in the construction of plumbing systems. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings, and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the requirements for plumbing fixtures allowed in Kentucky.

Section 1. Materials. Receptacles used as water closets, urinals, or for the disposal of human excreta, shall be of vitrified earthenware, hard natural stone, or cast-iron with a light color porcelain enameled on the inside, except as indicated in Section 4 of this administrative regulation.

Section 2. Installation. Plumbing fixtures shall be installed to allow access for cleaning All pipes from fixtures shall be run to the wall. A trap or pipe shall not extend nearer to the floor than twelve (12) inches except laundry trays or similar fixtures.

Section 3. Water Closet Bowls. A water closet bowl shall be of one (1) piece construction and hold a sufficient quantity of water when filled to the trap overflow to prevent fouling of its interior surfaces, and it shall be provided with an integral flushing rim to flush the entire interior of the bowl.

Section 4. Plastic Water Closet Bowl and Tank. (1) A plastic water closet bowl and tank shall be constructed with a polypropylene lining inside the one (1) piece bowl and tank.

(2) The outer surface of the bowl shall be constructed of PVC material.

(3) The filler material between the lining and outer surface shall be made of polyurethane foam.

(4) The bowl shall have:

(a) A three (3) inch water seal; and

(b) A two and one-eighth (2 1/8) inch waste opening passage.

Section 5. Frost-proof Closet. (1) A frost-proof water closet may be installed only in a building that has at least a twelve (12) inch air break between it and any building used for habitation or occupancy.

(2) The room shall be tightly enclosed and accessible from the outside only.

(3) The soil pipe between the trap and hopper shall be of extra heavy cast-iron, four (4) inches in diameter and shall be light colored porcelain enamel on the inside.

(4) The building shall have a nonabsorbent floor.

(5) A frost-proof water closet shall have a four (4) inch vent.

Section 6. (1) Floor drains and shower drains. A floor drain or a shower drain shall be considered a plumbing fixture and shall be provided with a strainer.

(2) Shower drain pan construction.

(a) A shower pan shall be constructed without a seam and shall extend to a minimum height of six (6) inches on all vertical walls.

(b) A shower pan shall not be required on a concrete floor before the outside grade level.

(c) A shower drain pan shall be constructed as follows:

1. Of sheet lead weighing not less than four (4) pounds per square foot;

2. Of nonplasticized chlorinated polyethylene produced and labeled as ASTM D-412 and[~~-66,~~] D-1204[~~-54 and D-568-61~~] and they shall be not less than 0.040 inches thick;

3. Of nonplasticized polyvinyl chloride (PVC) sheet material produced and labeled as ASTM D-1004, [~~D-2204,~~] D-412, 06A, and D-1790 and they shall be not less than 0.040 inches thick; or

4. Of other approved material as provided in 815 KAR 20.020, Section 5. Copies of ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) Fiberglass bathtubs, showers, tub enclosures and shower stalls.

(a) Fiberglass bathtubs and tub enclosures shall be produced and labeled as ANSI Z 124.1.

(b) Acrylic-faced bathtubs shall be produced and labeled as ASTM E8408A or E 162 [~~E-84B or E-162~~].

(c) Fiberglass shower stalls and shower receptors shall be produced and labeled as ANSI Z 124.2.

(4) Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, lavatories and shower stalls.

(a) Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs shall be produced and labeled as ANSI Z 124-1, lavatories shall be produced and labeled as ANSI Z 124-3 and shower stalls shall be produced and labeled as ANSI Z 124-2.

(b) Copies of ANSI specifications identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 7. Fixture Strainers. A fixture, other than a water closet or a pedestal urinal, shall be provided with a strainer. The outlet area of the strainer shall not be less than the interior area of the trap.

Section 8. Fixture Overflow. The overflow from a fixture shall be optional, but if used, the overflow shall be connected to the inlet side of a trap and accessible for cleaning.

Section 9. Fixture Additions. A fixture added to a plumbing system shall be installed to comply with all applicable sections of the State Plumbing Code.

Section 10. Defective Fixtures. If a newly installed fixture is found to be defective or if an old fixture is found to be in an unusable condition, it shall be repaired, replaced, or removed within thirty (30) days upon written notice from the department [~~office~~]

Section 11. Water Heaters. (1) A water heater shall be properly connected to the hot and cold water supply.

(2) A water heater designed for use as an appliance for supplying potable hot water for domestic or commercial purposes may be used for space heating if the water temperature does not exceed 140 degrees Fahrenheit.

(3) Every water heater shall be accessible for inspection, repair and replacement.

(4) If a water heater is installed in a crawl space, it shall have adequate access with a travel path no less than five (5) feet of vertical distance and be installed on at least a two (2) inch thick noncorrosive material adequate to support the heater.

(5) If a water heater is located in an attic of a residence, a water tight pan of corrosion resistant material shall be installed beneath the water heater and shall be equipped with at least a three-quarter (3/4) inch drain to be piped similarly to a pressure and temperature relief valve discharge line.

(6) A fuel-fired water heater shall be connected to a flue or chimney of a size which is at least as large as the size required by the water heater manufacturer's instructions.

(7) Fuel-fired water heater vents shall not be connected to a flue serving a coal-burning apparatus.

(8) The flue or chimney shall extend two (2) feet above the roof and shall be properly flashed and shall not terminate within six (6) feet of a door or window.

(9) A fuel-fired water heater, with the exception of those having direct-vent or through the wall vent systems, shall not be placed in any bathroom, toilet room or a room used for sleeping.

(10) If a fuel-fired water heater is placed in a closed room or closet, the door shall be a louver door or shall be properly ventilated to provide combustion air and circulation in accordance with National Fire Protection Association Pamphlet #54 (National Fuel Gas Code) incorporated by reference in Chapter 35 of the Kentucky Building Code filed in 815 KAR 7:120.

(11) Direct venting system location.

(a) Residential gas-fired direct vent and through the wall type water heaters shall be vented in accordance with the manufacturer's recommendations and shall be installed in accordance with the National Fire Protection Association Pamphlet #54 (National Fuel Gas Code) incorporated by reference in the Kentucky Building

Code filed in 815 KAR 7:120.

(b) The vent terminal of a direct vent appliance with an input of 50,000 BTU per hour or less shall be located at least nine (9) inches from any opening through which flue gases could enter a building, and an appliance with an input over 50,000 BTU per hour shall require a twelve (12) inch vent termination clearance.

(c) The bottom of the vent terminal and the air intake shall be located at least twelve (12) inches above grade.

Section 12. Conservation of Water. (1) Conservation of hot water.

(a) Showers. A shower used for other than safety reasons shall be equipped with an approved flow control device which shall limit the total flow to a maximum of two and one-half (2.5) gallons per minute per shower head.

(b) Lavatories.

1. Lavatories in restrooms of public facilities shall be equipped with an outlet device which shall limit the flow of domestic hot water to a maximum of 0.75 gallons per minute.

2. Lavatory faucets (other than those in restrooms of public facilities) shall be equipped with a flow control device which shall limit the flow of domestic hot water to a maximum of two (2.0) gallons per minute.

3. Sink faucets shall be equipped with a flow control device which shall limit the flow of domestic hot water to a maximum of two and one-half (2.5) gallons per minute.

(2) Conservation of cold water.

(a) Showers. A shower used for other than safety reasons shall be equipped with an approved control device to limit the total flow to a maximum of two and one-half (2.5) gallons per minute per shower head.

(b) Lavatory and sink faucets.

1. Lavatory faucets. Lavatory faucets shall be equipped with a flow control device which shall limit the flow of the domestic cold water to a maximum of two (2.0) gallons per minute

2. Sink faucets. Sink faucets shall be equipped with a flow control device which shall limit the flow of domestic cold water to a maximum of two and one-half (2.5) gallons per minute.

(c) Water closets. A water closet shall not be installed in a facility or building unless it is of a type designed and manufactured to limit the gallons per flush as required by this subsection:

1. Residential (private use) installations. A water closet for private use in a single family dwelling, duplex, or townhouse, condominium or apartment unit shall not exceed one and six-tenths (1.6) gallons per flush.

2. Commercial (public use) installations. A water closet for public use, including a commercial building, shall not exceed three and one-half (3.5) gallons per flush.

(d) Urinals. A urinal shall not exceed one (1.0) gallon per flush.

(3) The provisions of this section shall apply to new construction, renovation and replacement in an existing structure. Upon compliance with the requirements of this section, the Division of Plumbing shall permit the installation of a tank type water closet equipped with devices found by the inspector to meet applicable specifications in water closets having a tank capacity in excess of three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters). The Division of Plumbing shall allow the use of a standard flush water closet and a urinal which does not meet the specific specifications if, in the opinion of the division, the configuration of the building drainage system requires a greater quantity of water to adequately flush the system, or if the owner requests the use of antique fixtures which may not be equipped for reduced flow.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary Public

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 15, 2009 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on May 26, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for plumbing fixtures allowed in Kentucky.

(b) The necessity of this administrative regulation: Deletes nonexisting standards and updates existing standards

(c) How this administrative regulation conforms to the content of the authorizing statutes. KRS 318.130 requires the Department, after review by the State Plumbing Code Committee, to promulgate and amend the Kentucky State Plumbing Code regulating plumbing, including the kind, type and quality of plumbing fixtures to be used in the construction of plumbing systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Standardizes fixtures for the Commonwealth.

(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: Deletes nonexisting standards and updates existing standards.

(b) The necessity of the amendment to this administrative regulation: Establishes standards for plumbing fixtures in the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment will delete standards no longer in existence and update existing standards.

(d) How the amendment will assist in the effective administration of the statutes: Assists the Department and plumbers in utilizing current standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Plumbers and plumbing inspectors who must comply with the State Plumbing Code.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Plumbers and inspectors must be certain that plumbing fixtures used and incorporated into systems comply with these standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost would be associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Plumbing projects within the Commonwealth will be consistent and use approved plumbing fixtures only.

(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 implementation and enforcement of this administrative regulation: No funding is associated with the amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No tiering is applied to this administrative regulation amendment as it merely deletes standards no longer in existence and updates existing standards.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors will be affected by this administrative regulation amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this administrative regulation is found in KRS 318.130.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulatory amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation relates to the deletion of standards that no longer exist and updating to existing standards.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:071. Storage and Installation of Schedule 40, ABS and PVC plastic pipe and fittings.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130, EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: The department [office] is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation relates to the method needed for storage, handling and installation of schedule 40, ABS and PVC plastic pipe and fittings. [~~This administrative regulation is being amended because new fittings are now available which allows for expansion when connecting plastic pipe to metal as well as a new means of connecting different kinds of plastic pipe.~~]

Section 1. Storage. (1) Pipe. Pipe shall remain in lifts until ready for use. Lifts shall not be stacked more than three (3) high and shall always be stacked wood-on-wood. Loose pipe shall be stored in racks with a minimum support space of three (3) feet. Pipe shall be shaded but not directly covered when stored outside in high ambient temperatures to provide for free circulation of air and reduce the heat buildup due to direct sunlight exposure.

(2) Fittings. Fittings shall be stored in their original cartons to be kept free of dirt and to reduce the possibility of damage. If possible, fittings shall be stored indoors.

(3) Solvent cement and primers. Solvent cement and primers shall not be exposed to ignition, sparks, open flames or heat during storage and shall not be used beyond their marked shelf life.

Section 2. Handling. Care shall be exercised to avoid rough handling of pipe and fittings. They shall not be dragged over sharp projections, dropped or have heavy objects dropped on them. Pipe ends shall be inspected for cracks in the event of abuse prior to installation. (If transported by truck or trailer, piping shall be reasonably supported.)

Section 3. Installation. (1) Underneath concrete floors. Pipe and fittings shall be laid on stable earth conditions and have four (4) inches of grillage on its bottom, top and sides. If ground is unstable, it shall be removed and the excavation filled with grillage to the underneath side of the piping. Soil or waste pipe shall not be placed in a concrete slab except those pipes that pass vertically through it.

(2) Above concrete floors. Horizontal piping shall be properly aligned and installed without strain. Piping shall not be bent or pulled in position either before or after solvent welds have been made. It shall be supported at intervals not to exceed four (4) feet and at the end of the branches and at the change of direction and shall be so installed as to permit freedom of movement. Vertical piping shall be supported at their bases and all upward movement shall not be restricted. Closet flanges shall be securely fastened to the floor through which it passes.

Section 4. Hangers. Hangers and straps shall be at least one (1) inch wide and shall not compress, distort, cut or abrade the piping to allow free movement at all times.

Section 5. Making Solvent Cement Joints. (1)(a) Cement shall not be thinned. Cement that has thickened shall be discarded. Cement shall not be used beyond its shelf life and shall not be subject to temperatures below thirty (30) degrees Fahrenheit.

(b) Installers shall avoid prolonged breathing of vapors. Prolonged contact with skin is harmful. Install only with adequate ventilation. Avoid contact with eyes and skin. Solvents are also flammable.

(2) Socket fit. ABS and PVC fittings are manufactured to a close tolerance. Joints shall be an interference fit between pipe and fittings. Additional cement shall not be permitted for the correction of loosely fitted joints.

(3) Joining techniques. Piping shall be cut square with a saw or pipe cutter designed especially for plastic pipe. Pipe and fittings shall be protected from serrated holding devices or abrasions.

(a) Burrs shall be removed from both inside and outside of the pipe. Dust, dirt and moisture shall be removed from the surfaces that shall be cemented.

(b) Solvent chemical cleaner recommended by the company whose product is being installed shall be applied inside the fitting and on the outside of the piping shall be joined.

(c) A paint brush shall be used to apply the solvent cement in a moderate, even coating in the fitting socket as well as covering the pipe on the joining surfaces.

(d) Joints shall be assembled as quickly as possible before the cement dries. Insert the piping into the fitting socket turning the pipe slightly to ensure even distribution to the cement. Hold the

piping in a firm position so it does not "back out" of the joint.

(e) Remove excess solvent cement from the exterior of the joint with a clean dry cloth. The joint shall not be handled for a two (2) minute period. A fifteen (15) minute period shall be allowed for the joint to develop hanging strength.

(f) A Cemented pipe joint shall not be made in conditions of excessive moisture (ninety (90) percent humidity level) or when the temperature is below forty (40) degrees or above ninety (90) degrees Fahrenheit.

Section 6. Commingling of Plastic Pipe. Plastic pipe shall not be commingled except through the use of male and female adapters or other transition fittings approved by administrative regulation of the department. Solvent transition joints between ABS and PVC shall meet ASTM 3138 [~~office~~].

Section 7. Mixing of Plastic and Metal Piping. Plastic and metal piping shall discharge into one another by the use of proper fittings and adapters.

Section 8. Thermal Expansion. Each plumbing installation shall be engineered and designed giving due consideration to the expansion characteristics of the material. Expansion tables for both PVC and ABS schedule 40 plastic piping are as follows:

PVC-DWV TYPE 1 THERMAL EXPANSION TABLE Chart Shows Length Change in Inches vs. Degrees Temperature Change							
Lg. Ft.	40°F	50°F	60°F	70°F	80°F	90°F	100° F
20	278	.348	.418	.487	.557	.626	.696
40	.557	.696	.835	.974	1.114	1.235	1.392
60	.835	1.044	1.253	1.462	1.670	1.879	2.088
80	1.134	1.392	1.670	1.949	2 227	2.506	2.784
100	.392	1.740	2.088	2.436	2.784	3.132	3.480

ABS-DWV TYPE 1 THERMAL EXPANSION TABLE Chart Shows Length Change in Inches vs. Degrees Temperature Change							
Lg. Ft.	40°F	50°F	60°F	70°F	80°F	90°F	100° F
20	0.536	0 670	0 80	0 938	1.072	1.206	1.340
40	1 070	1 340	1.610	1 880	2.050	2.420	2 690
60	1.609	2 010	2.410	2 820	3.220	3.620	4.020
80	2.143	2 680	3.220	3 760	4.290	4 830	5.360
100	2.680	3.350	4.020	4.700	5.360	6.030	6 700

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary Public

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 15, 2009 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation relates to the method needed for storage, handling and installation of schedule 40, ABS and PVC plastic pipe and fittings.

(b) The necessity of this administrative regulation: Provides an installation method.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to be used within the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will provide an additional installation method.

(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: It will add an additional installation method.

(b) The necessity of the amendment to this administrative regulation: Will add an additional installation method.

(c) How the amendment conforms to the content of the authorizing statutes: Adds additional installation method.

(d) How the amendment will assist in the effective administration of the statutes: Will provide plumbers with an additional installation method.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Housing, Buildings and Construction, plumbers and plumbing inspectors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Plumbers and plumbing inspectors must be certain that care is taken in the handling, transportation and storage of plastic piping

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs associated with the implementation of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the provisions for the storage and installation of materials, plumbers and inspectors will be ensuring less waste and damage to materials.

(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 implementation and enforcement of this administrative regulation: No funding is associated with the amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No tiering is applied as this amendment adds additional storage and installation requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors will be affected by this amended regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The statutory authority for this amendment is found in KRS 318.130.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulatory amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation relates to the addition of an additional method of installation.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:074. Installation standards for steel and wrought iron pipe.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130, EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: The department [~~office~~] is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings, and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation relates to the proper installation of steel and wrought iron pipe and fittings and identifies the manufacturer's specification number of the material accepted in those installations [~~This amendment is necessary to correct references to standards to comply with KRS Chapter 13A drafting rules.~~]

Section 1. Materials. Steel pipe shall be produced and labeled with the current ASTM specification number for welded wrought iron pipe or welded and seamless steel pipe. Schedule 40 shall be the minimum weight. For water distribution or soil, waste and vent, galvanized pipe shall be used. Copies of ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103

Section 2. Cutting and Reaming. (1) Pipe shall be cut to length with a square cut using pipe cutters, hacksaw or abrasive saw.

(2) If the cut-to-length pipe is to be threaded or prepared for a mechanical connection, it shall be reamed to the full inner diameter of the pipe.

Section 3. Jointing Techniques. (1) Screw joints. Screw joints shall be made by the use of a properly cut thread inserted into the female part of the fitting after applying the recommended pipe joint compound sparingly to the male threads. Tighten hand-tight to check for alignment and then tighten enough to insure a tight leak-proof joint. Do not overtighten.

(2) Mechanical joints. Mechanical joints for hot and cold water shall not be used above ground unless the couplings are galvanized and the gaskets are ASTM D 2000 [~~D-735-61~~], Grade N-R-615 BZ. The pipe ends shall be lubricated with an approved lubricant and the gasket shall be slipped over one (1) pipe end. The pipe ends shall be connected and the gasket shall be inserted into central spanning position. The housing clamps shall be placed over the gasket and the bolts and nuts tightened with a socket wrench.

Section 4. Hangers and Supports. (1) Hangers, anchors and supports shall be of sufficient strength to support the piping and its contents. Hangers, anchors and supports shall be securely attached to the building construction at intervals to support the piping and its contents. Provisions shall be made to allow for expansion, contraction, structural settlement and vibration.

(2) Vertical piping.

(a) Screwed piping shall be supported at every other story height and supports shall be of ferrous metal.

(b) Mechanical joint piping shall be supported at every story height and supports shall be of ferrous metal.

(3) Horizontal piping. Horizontal piping shall be supported at intervals which keep the piping in alignment and prevent sagging. Screwed and mechanical joint pipe one and one-half (1 1/2) inches and over shall be supported at twelve (12) foot intervals; one and one-quarter (1 1/4) inch and smaller shall be supported at eight (8) foot intervals. Supports shall be of ferrous metal.

RICHARD MOLONEY, Commissioner

ROBERT D. VANCE, Secretary Public

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation relates to the proper installation of steel and wrought iron pipe and fittings.

(b) The necessity of this administrative regulation: Deletes standards that no longer exist and updates existing standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of

Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to be used within the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It deletes standards that no longer exist and updates existing standards.

(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· It will delete standards that no longer exist and update existing standards.

(b) The necessity of the amendment to this administrative regulation. Deletes standards that no longer exist and updates existing standards.

(c) How the amendment conforms to the content of the authorizing statutes: Deletes standards that no longer exist and updates existing standards.

(d) How the amendment will assist in the effective administration of the statutes: Will assist the department and plumbers in utilizing updated standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Housing, Buildings and Construction, plumbers and plumbing inspectors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None as the regulated entities are accustomed to this standard.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3)· No cost is associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). None as the regulated entities are accustomed to this standard.

(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: No funding is associated with the amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No tiering is applied as this amendment deletes conflicting language.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors will be impacted by this regulation amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Authority for this regulatory amendment is found in KRS 318.130.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect This amendment will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulatory amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation deletes standards that no longer exist and updates existing standards

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:090. Soil, waste, and vent systems.

RELATES TO KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130, EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department [~~office~~], after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky for soil, waste, and vent systems. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings, and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in each type of plumbing system.

Section 1. Grades and Supports of Horizontal Piping. (1) Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer's recommendations but shall not exceed ten (10) feet in length.

(2) A stack shall be supported at its base and each pipe shall be rigidly secured.

(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.

(4) Polyvinyl chloride and acrylonitrilebutadiene-styrene schedule forty (40) horizontal piping shall be supported at

(a) Intervals not to exceed four (4) feet;

(b) At the base of each vertical stack; and

(c) At each trap branch as close to the trap as possible.

(5) Polyethylene pipe and fittings shall be continuously supported with a V channel.

(6) A stack shall be rigidly supported at its base and at the floor level.

Section 2. Change in Direction. (1) Except as provided in subsections (2), (3), or (4) of this section, a change in direction shall be made by the appropriate use of a forty-five (45) degree wye, half-wye (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bend.

(2) A single sanitary tee may be used in a vertical stack.

(3) A sanitary tee may be turned on its back or side at an angle of not more than forty-five (45) degrees.

(4) A double sanitary tee may be used on a vertical soil, waste and vent line.

Section 3. Prohibited Fittings. The following shall be prohibited
(1) A double hub bend and double hub tee or inverted hub on a sewer, soil or waste line;
(2) The drilling and tapping of a house sewer or house drain, soil, waste or vent pipe;
(3) The use of a saddle hub; and
(4) Pipe installed with a hub or restriction that reduces the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a drainage system, a dead end shall not be used.

Section 5. Protection of Material. (1) A pipe passing under or through a wall shall be protected from breakage.
(2) A pipe passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. (1) Main or branch soil, waste and vent pipes and fittings within or underneath a building shall be:
(a) Hub and spigot extra heavy or service weight cast iron;
(b) No-hub service weight cast iron;
(c) [~~Aluminum,~~
~~(d)~~] Galvanized steel;
(d)[~~(e)~~] Galvanized wrought iron;
(e)[~~(f)~~] Lead,
(f)[~~(g)~~] Brass;
(g)[~~(h)~~] Types K, L, M, and DWV copper;
(h)[~~(i)~~] Standard high-frequency welded tubing produced and labeled with the latest ASTM specifications[~~as ASTM B-586-73~~];
(i)[~~(j)~~] Types R-K, R-L, R-DWV brass tubing;
(j)[~~(k)~~] DWV brass tubing produced and labeled as ASTM B587 [~~B-587-73~~];
(k)[~~(l)~~] Seamless stainless steel tubing;
(l)[~~(m)~~] Grade G or H produced and labeled as ASTM A-312;
(m)[~~(n)~~] Polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM D2665, D1784, [~~D-2665-76, D-1784-75~~] and F-891;
(n)[~~(o)~~] Coextruded composite PVC pipe produced and labeled ASTM F-1488,
(o)[~~(p)~~] Acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM D2661 [~~D-2661-90, D-1788-73~~] or F-628; or
(p)[~~(q)~~] Silicon iron or borosilicate
(2) A main or branch soil waste and vent pipe and fittings underground shall either be:
(a) Hub and spigot extra heavy or service weight cast iron;
(b) No-hub service weight cast iron;
(c) [~~Aluminum;~~
~~(d)~~] Type K or L copper pipe;
(d)[~~(e)~~] Type R-K, R-L brass tubing;
(e)[~~(f)~~] Lead, or
(f)[~~(g)~~] Silicon iron or borosilicate pipe and fittings or plastics DWV identified in this section.
(3) Underground waste pipe installed beneath a concrete slab shall not be less than two (2) inches in diameter and shall extend no less than twelve (12) inches above the concrete slab.

Section 7. Size of Soil and Waste Pipe per Fixture Unit on One Stack. (1) The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (In Inches)	Maximum Developed Length	Fixture Units
1 1/4	25 ft	1
1 1/2	60 ft	2
2	80 ft	6
2 1/2	100 ft	12
3	225 ft.	36
4	unlimited	172
5	unlimited	342
6	unlimited	576
8	unlimited	1600
10	unlimited	2900
12	unlimited	4600

(2) A water closet shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch line.

Section 8. Soil, and Vent Stacks. (1) A building in which a plumbing fixture is installed shall have a soil or waste and vent stack, or stacks, extending full size through the roof.
(2) A soil or waste and vent stack shall be as direct as possible and free from sharp bends or turns.
(3) The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that more than three (3) water closets shall not discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with this administrative regulation.

Section 10. House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.
(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain may be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections.
(1) A soil and waste stack or branch shall have correctly faced inlets for fixture connections.
(2) Each fixture shall be independently connected to the soil or waste system.
(3) A fixture connection to a water closet, floor-outlet pedestal sink, pedestal urinal, or other similar plumbing fixture shall be:
(a) Cast iron;
(b) Lead;
(c) Brass;
(d) Copper; or
(e) Plastic closet bend.
(4) A three (3) inch closet bend shall have a four (4) inch by three (3) inch flange.

Section 12. Changing Soil and Vent Pipes in an Existing Building. In an existing building if the soil, waste and vent piping is not extended undiminished through the roof or if there is sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work.

Section 13. Prohibited Connections. (1) A fixture connection shall not be made to a lead bend or a branch of a water closet or a similar fixture
(2) A vent pipe above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. Soil, Waste and Vent Pipe Protected. (1) Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost.
(2) The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. Roof Extensions. (1) A roof extension of soil and

waste stacks shall run full size at least one (1) foot above the roof.

(2) If the roof is used for purposes other than weather protection, the extension shall not be less than five (5) feet above the roof.

(3) A stack of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof.

(4) If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section 16. Terminals. If a roof terminus of a stack or vent is within ten (10) feet of the top, bottom, face or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings (1) Soil, waste or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside the building unless the piping is protected from freezing.

(2) If the new building is built higher than the existing building, the owner of the new building shall not locate a window within ten (10) feet of an existing vent stack on the lower building

Section 18. Protected Traps and Vents. (1) A fixture trap shall be protected against siphonage and backpressure

(2) Air circulation shall be assured by means of an individual vent.

(3) A crown vent shall not be permitted

Section 19. Distance of Trap from Vent (1) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening. The fixture trap vent, except for a water closet or a similar fixture, shall not be below the dip of the trap, and each ninety (90) degree turn in the waste line of the main waste, soil, or vent pipe shall be washed. A fixture trap shall have a vent located with a developed length not greater than that set forth in the table below:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft 6 in
1 1/2	3 ft 6 in
2	5 ft.
3	6 ft.
4	10 ft.

(2) A fixture branch on a water closet shall not be more than four (4) feet six (6) inches.

Section 20. Main Vents to Connect at Base. (1) All main vents or vent stacks shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch and shall extend undiminished in size through the roof or shall be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture.

(2)(a) Except as provided in paragraph (b) of this subsection, if it becomes necessary to increase the size of a vertical vent stack, the entire stack shall be increased from its base.

(b) If the height of a stack which does not serve as the main vent is less than forty-five (45) feet, it shall not be required to be increased from its base

Section 21. Vents; Required Sizes. (1) The required size of a vent or vent stack shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, if necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS		
Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10
2	200	24
2 1/2	250	36
3	300	72
4	400	240
5	800	720

(2) Except for a residential installation, if a fixture opening is installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste system, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

Section 22. Branch and Individual Vents A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

Section 23. Vent Pipes Grades and Connections. (1) A vent or branch vent pipe shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity.

(2) If a vent pipe connects to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe shall rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil or vent.

Section 24. Vents Not Required; Backwater Traps, Subsoil Catch Basin and Basement Floor Drains. (1) A vent shall not be required on a backwater trap, subsoil catch basin trap or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet

(2) A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

Section 25 When Common Vent Permissible. If two (2) water closets, two (2) lavatories or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 19 of this administrative regulation measured along the center line of the flow of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with this administrative regulation.

Section 26. Floor Drain Individual Vent Not Required. (1) A manufacturer's floor drain shall not require an individual vent if placed on a waste line for a floor drain within the prescribed distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack.

(2) An open receptacle may be connected to a floor drain line without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

Section 27. Floor Drain. A floor drain or service sink installed on the operational floor level of a sewage and water treatment plant facility which discharges into an open sump and is not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

Section 28. House Drain Material. A house drain shall be:
(1) Extra heavy cast iron;
(2) Service weight cast iron;
(3) Brass;
(4) Type (K) or (L) copper;
(5) Lead;
(6) ABS or PVC plastic; or
(7) Duriron.

Section 29. Indirect Waste Connections. (1) Waste pipe from a refrigerator drain or other receptacle where food is stored or waste water from a water cooled compressor shall connect indirectly with the house drain, soil or waste pipe.

(2) The drain shall be vented to the outside air.

(3) The waste pipe shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with this administrative regulation.

(4) The connection shall not be located in an inaccessible or unventilated area.

Section 30. Bar and Soda Fountain Wastes. (1) A bar and soda fountain waste, sink or receptacle shall have a one and one-half (1 1/2) inch P trap and branches The main shall not be less than two (2) inches. The fresh air pipe shall not be less than one and one-half (1 1/2) inches. The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building.

(2) A floor receptor or floor sink may be installed flush with the finished floor if it has a full grate with an attached funnel to receive indirect waste.

(3) A floor receptor or floor sink installed specifically for the indirect wastes from a tilting braising pan, tilting kettle, or other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

Section 31. Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground if it discharges into a septic system.

Section 32. Refrigerator and Condensate Wastes. A refrigerator or condensate discharge waste pipe shall not be less than one and one-half (1 1/2) inches for one (1) to three (3) openings, and at least two (2) inches for four (4) to eight (8) openings. Each opening shall be trapped. The waste piping shall be equipped with sufficient cleanouts to allow for thorough cleaning.

Section 33. Overflow Pipes. Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe. The waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section 34. Acid and Chemical Wastes. A corrosive liquid shall not be permitted to discharge into the soil, waste or sewer system unless otherwise permitted by this administrative regulation. The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section 35. Laboratory Waste Piping (1) Laboratory waste piping shall be sized in accordance with this administrative regulation and each fixture shall be individually trapped.

(2) A continuous waste and vent pipe system may be used, if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated if the pit has a ventilated cover.

(3) If a dilution pit is not required and is not used, the fixtures shall be individually vented.

(4) If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof.

(5) A fixture branch exceeding more than the distance specified in the table in Section 19 of this administrative regulation from the main shall be revented and the distance shall be measured from the center of the main to the center of the vertical riser.

(6) A fixture connection shall rise vertically to a height so that the trap shall not be lower than twelve (12) inches from the bottom of the sink. Two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 36. Acid Waste Piping. (1) Underground piping for acid wastes shall be:

(a) Extra heavy salt glazed vitrified pipe;

(b) Silicon iron;

(c) Lead;

(d) Polyethylene pipe and fittings produced and labeled as ASTM D204 [~~D-1204-62T~~];

(e) Polypropylene pipe produced and labeled as ASTM D4101 [~~D-4101-85~~];

(f) Polypropylene pipe and fittings produced and labeled as ASTM F-1412; or

(g) Other materials approved in 815 KAR 20.020, Section 5.

(2) Piping for acid wastes and vents above ground shall be:

(a) Silicon iron;

(b) Lead;

(c) Borosilicate;

(d) Polyethylene pipe produced and labeled as ASTM D-1204-62T;

(e) Polypropylene pipe produced and labeled as ASTM D-4101-85; or

(f) Filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (green or poly thread).

Section 37. Special Vents. A flat vent may be allowed if the design of the building prohibits the type of venting required by this administrative regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. (1) Except for a basement floor drain exempted under subsection (2) of this section, a basement floor drain shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation.

(2) A basement floor drain in a single family dwelling shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. If the drain is not to be connected to the house sewer, the installation shall also be exempt from the waste, trap and venting provisions of the State Plumbing Code.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary Public

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 15, 2009 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person. Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-

tive regulation identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in each type of plumbing system.

(b) The necessity of this administrative regulation: Deletes standards and pipe that no longer exist and will allow new material to be used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to be used within the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. Deletes standards and pipe that no longer exist and will allow new material to be used.

(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: It will delete standards and pipe that no longer exist and will allow new material to be used.

(b) The necessity of the amendment to this administrative regulation: The regulation amendment deletes standards and pipe that no longer exist and allow new material to be used.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment deletes standards and pipe that no longer exist and allow new material to be used.

(d) How the amendment will assist in the effective administration of the statutes: Will assist the department and plumbers in utilizing updated standards and new material.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Division of Housing, Buildings and Construction, plumbers and plumbing inspectors will be affected by the present amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Plumbers will need to utilize accepted materials for soil waste and vent systems; inspectors will need to confirm that accepted materials are used.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is associated with the changes of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will reduce contradictions and give more options to plumbers by allowing choices from more accepted materials under the State Plumbing Code.

(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 implementation and enforcement of this administrative regulation: No funding is associated with the amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No tiering is applied as this amendment deletes conflicting language.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Authority to promulgate and amend the State Plumbing Code is conferred upon the Department of Housing, Buildings and Construction by KRS 318.130.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulatory amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation deletes non-existing standards, updates existing standards, deletes pipe that is no longer produced and allows new materials.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-)

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:100. Joints and connections.

RELATES TO: KRS 198B.040(7), (10), 198B.050(2), 318.130, 318.150

STATUTORY AUTHORITY: KRS [~~13A.120,~~] 198B.040(10), 318.130, EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department [~~office~~], after review by the State Plumbing Code Committee, to promulgate a State Plumbing Code. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings, and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the methods that shall be used in joining certain types of piping materials together and denoting the methods that shall be used in securing plumbing fixtures to waste piping outlets. This administrative regulation also identifies the manufacturer's specification number of the material accepted in those installations.

Section 1. Definitions. (1) "ANSI" means the American National Standards Institute and a copy of the ANSI specifications identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, NY 10018.

(2) "ASTM" means the American Society for Testing Materials and a copy of the ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

Section 2. Water and Airtight Joints. Joints and connections shall be made gas and water tight.

Section 3. Vitrified Pipe Joints; Concrete Pipe Joints; House Sewers - Combined Sewers. (1) Joints in vitrified clay pipe shall be ASTM specification C-425.

(2) Joints in concrete pipe shall be ASTM specifications C-443.

(3) If it is necessary to use piping in other than standard lengths hot poured joints may be used.

(4) Joints between cast iron pipe and vitrified clay pipe or concrete pipe shall be made either of hot poured bitumastic compound or by a preformed elastomeric ring. The ring shall completely fill the annular space between the cast iron spigot and the vitrified clay or concrete pipe hub.

(5) Joints in pipe and fittings with no more than two (2) pipe sizes between vitrified clay, acrylonitrile-butadiene-styrene or polyvinyl chloride to cast iron pipe and fittings or the joining of either material may be made with proper fittings by using a dispersion grade polyvinyl chloride ring produced and labeled as either ASTM C-443, C-425, [~~C-594,~~] C-564, [~~or D-1829~~] or a elastomeric polyvinyl chloride coupling.

Section 4. Caulked Joints. Caulk joints shall be firmly packed with oakum or hemp and shall have at least one (1) inch of pure lead properly caulked. Paint, varnish or putty shall not be permitted until tests have been performed.

Section 5. (1) Screw joints. Screw joints shall be American Standard screw joints and all burrs or cuttings shall be removed.

(2) Mechanical joint couplings for hot and cold water. Mechanical joint couplings for hot and cold water shall not be used above ground unless the couplings are galvanized and the gaskets produced and labeled as ASTM D2000 [~~D-735-61~~], grade N-R-615 BZ, or other material listed in approved parts or materials list, 815 KAR 20:020.

(3) Mechanical joint couplings for storm water piping. Mechanical joint couplings for storm water piping shall not be used above ground unless the couplings are either black iron or galvanized and the gaskets produced and labeled as ASTM D2000 [~~D-735-61~~], grade N-R-615 BZ.

(4) Joints in PVC and ABS Schedule 40 or 80 pipe and fittings.

(a) Joints in polyvinyl chloride schedule 40 or 80 pipe and fittings shall be solvent welded joints and shall be in compliance with ASTM D2665 [~~D-2665-69~~].

(b) Joints in acrylonitrile-butadiene-styrene pipe and fittings shall be solvent welded joints and shall be in compliance with ASTM D2661 [~~D-2661-90~~].

(c) Acrylonitrile-butadiene-styrene and polyvinyl chloride sewer piping produced and labeled as ASTM [~~3033-or~~] 3034 shall be joined by solvent cement produced and labeled as ASTM D-2661-90 for acrylonitrile-butadiene-styrene and ASTM D2665 [~~D-2665-69~~] for polyvinyl chloride or with an elastomeric joint in compliance with ASTM D3212 [~~D-3212-73~~].

(5) Copper pipe, brass and stainless steel tubing joints.

(a) Joints of copper pipe, brass and stainless steel tubing shall be soldered.

(b) Mechanical couplings. Types K and L copper tubing systems from two (2) inch through six (6) inch and used for water distribution may be installed using mechanical pipe couplings of a bolted type with a flush seal gasket along with grooved end copper fittings. Couplings shall be of the angle pad design to obtain rigidity.

(6) Expansion. An expansion joint shall be of an approved type and the material shall comply with the type of piping in which it is installed.

(7) Brazed joints. Brazed joints shall be made by cleaning the surfaces to be joined down to the base metal, applying flux approved for the joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.

(8) Elastomeric polyvinyl chloride coupling. Elastomeric polyvinyl chloride couplings shall be used for connecting cast iron, vitrified clay, concrete, or plastic pipe or the combination of these pipe materials for use on house sewers and combination sewers only. This coupling shall be provided with #305 stainless steel clamps. [~~(9) Joints in aluminum pipe shall be made by use of an adaptor ring (complete with mastic seal) over the cut end of the pipe and the use of an approved elastomeric sealing sleeve with a corrosion resistant clamping device~~]

Section 6. Cast Iron Soil Pipe Joints. (1) Joints in cast iron shall either be caulked, screwed, or made with the use of neoprene gaskets. Neoprene gaskets shall be produced and labeled as ASTM C-564-70.

(2) Cast iron coupling for joining hubless cast iron pipe shall consist of neoprene gasket produced and labeled as ASTM C-564, cast iron clamps produced and labeled as ASTM A-48 and stainless steel bolts and nuts produced and labeled as ANSI B-18.2.1 and ANSI B-18.2.2.

Section 7. Borosilicate Joints. Joints and gaskets used for borosilicate pipe shall be made in a manner approved by the office.

Section 8. (1) Steel, brass and copper connections to cast iron pipe. Steel, brass and copper joints when connected to cast iron pipe shall be either screwed or caulked joints. Caulked joints shall be made by the use of a caulking spigot.

(2) PVC and ABS pipe and fitting connections to steel, brass, copper and cast iron pipe.

(a) Polyvinyl chloride and acrylonitrile-butadiene-styrene pipe and fitting connections to steel, brass, copper or cast iron pipe shall be either a screwed or caulked joint.

(b) Joints between Schedule 40 PVC or ABS pipe and cast iron pipe may be made by the use of a neoprene gasket produced and labeled as ASTM C-564-70.

(c) Caulk joints shall be made with the use of either a polyvinyl chloride or acrylonitrile-butadiene-styrene or cast iron caulking spigot.

(3) Stainless steel tubing to cast iron pipe or galvanized steel pipe or to copper tubing. Stainless steel tubing to cast iron pipe shall be made by caulking spigot. Stainless steel tubing to galvanized steel pipe or copper pipe shall be made by the use of an adaptor.

(4) Joints in acid waste piping. Joints in vitreous glazed piping shall be made in compliance with manufacturer's recommendations. Joints in polyethylene and polypropylene piping shall be made by the heat fusion process. Joints in polypropylene shall be made with a union joint. Joints in borosilicate pipe shall be a stainless steel mechanical joint. Joints between silicon iron pipe shall be either caulk joint or stainless steel mechanical joint.

Section 9. Lead Pipe. Joints in lead pipe or between lead pipe and brass or copper pipes, ferrules, soldering nipples, or trap, shall be full-wiped joints with an exposed surface of the solder at each side of the joint of not less than three-quarters (3/4) of an inch. The minimum thickness of the thickest part of the joint shall be at least as thick as the material being used. If lead pipe is used for acid waste lines, the pipe may be joined by burning.

Section 10. Lead Pipe to Cast Iron, Steel, or Wrought Iron Pipe. The joints between lead to cast iron, steel or wrought iron shall be made by means of a caulking ferrule or a soldering nipple.

Section 11. Wall or Floor Flange Joints. Wall or floor flange joints shall be made by using a lead ring or brass flange and shall be properly soldered

Section 12. Soil Pipe, Iron Pipe, Copper Pipe; Tubular Trap Joints. Joints between soil pipe, iron pipe, copper pipe and tubular traps shall be made by the use of a heavy red cast brass adaptor. Tubular traps shall be soldered to the adaptor in compliance with manufacturer's recommendations.

Section 13. Slip Joints. Slip joints shall be permitted only on the inlet side of a trap.

Section 14. Unions. Unions shall be ground faced and shall not be concealed or enclosed.

Section 15. Roof Joints. (1) The joint at the roof shall be made watertight by use of copper, lead or other approved flashing or

flashing material.

(2)(a) Except as provided in paragraph (b) of this subsection, the approved flashing shall:

1. Not extend less than six (6) inches from the pipe in all directions; and

2. Extend upward twelve (12) or more inches and turn down into the pipe.

(b) Lead flashings for three (3) inch and four (4) inch vent stacks shall have a minimum twelve (12) inch base.

(3) A hub flashing may be used if it is constructed in a manner allowing the flashing to be caulked into a hub above the roof.

Section 16. Increasers and Reducers. If different size pipes or fittings are to be concealed, the proper size increaser or reducer pitched at an angle of forty-five (45) degrees between the two (2) sizes, shall be used. This section shall not apply to nonmetallic installations.

Section 17. Prohibited Joints and Connections. A fitting or connection which has an enlargement chamber, or recess with a ledge shoulder, or reduction of the pipe area in the direction of the flow shall be prohibited.

Section 18. Hangers and Supports. Piping and fixtures shall be adequately supported by hangers or anchors securely attached to the building construction.

Section 19. Welded Pipe for Soil, Waste and Vent Systems. Mild steel pipe may be welded for a soil waste and vent system if the welds are mechanically sound and the bore of the piping is smooth throughout its length. The welded piping shall be covered with a metallic continuous coating Written permission shall be secured from the office for this type system.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary Public

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the methods that shall be used in joining certain types of piping materials together and denoting the methods that shall be used in securing plumbing fixtures to waste piping outlets.

(b) The necessity of this administrative regulation: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to be used within the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced.

(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: Deletes standards that no longer exist and updates existing standards It will also delete a product that is no longer produced.

(b) The necessity of the amendment to this administrative regulation: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced.

(c) How the amendment conforms to the content of the authorizing statutes: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced.

(d) How the amendment will assist in the effective administration of the statutes: Will assist the department and plumbers in utilizing updated standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Housing, Buildings and Construction, plumbers, and plumbing inspectors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Plumbers and inspectors must be certain that plumbing fixtures used and incorporated into systems comply with these standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this regulation amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Plumbing projects within the Commonwealth will use the approved plumbing fixtures which have been updated, and not have outdated, nonexistent materials listed as approved.

(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 implementation and enforcement of this administrative regulation: No funding is associated with the amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No tiering is applied as this amendment deletes conflicting language.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. Under KRS 318.130, the Department of Housing, Buildings and Construction is directed and authorized to promulgate and amend the Kentucky State Plumbing Code.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulatory amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation updates existing standards, deletes non-existing standards and deletes a product that no longer exists.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS 318.010, 318.130, 318.150, 318.165, 318 200

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130, EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department [office], after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings, and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the types of piping and pipe sizes required for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

Section 1. Definitions. (1) "ASSE" means the American Society of Sanitary Engineers.

(2) "ASTM" means the American Society for Testing Materials.

(3) "Critical level" or "CL" means the level to which the vacuum breaker may be submerged before backflow will occur, and if the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DWV" means drain, waste and vent piping.

(5) "NSF" means the National Sanitation Foundation.

(6) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations of the department [office] and other governing authorities. Toxic material shall be kept out of a potable water system.

(a) The pipe conveying, and each surface in contact with, potable water shall be constructed of nontoxic material.

(b) A chemical or other substance that could produce either a toxic condition, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, the system

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a material that will affect the taste, odor, color, or potability of the water supply if the tank is placed in, or returned to, service.

(2) Potable water shall be accessible to a plumbing fixture that supplies water for drinking, bathing, culinary use or the processing of a medicinal, pharmaceutical, or food product.

(3) The potable water supply system shall be designed, installed, and maintained to prevent contamination from a nonpotable liquid, solid, or gas being introduced into the potable water supply through a cross connection or other piping connection to the system.

(4) A cross connection shall be prohibited unless:

(a) The connection meets the other requirements established in this administrative regulation; and

(b) A suitable protective device is installed.

(5) A cross connection between a private water supply and a public water supply shall not be made.

(6) Closed water systems, protection from excess pressure.

(a) If a single check valve is installed in a water system, a thermal expansion tank sized in accordance with manufacturer's instructions shall be installed in the cold water supply located near the water heater

(b) If a backflow preventer is installed in a water system, a properly sized thermal expansion tank or other pressure relief device listed in 815 KAR 20 020 shall be installed in the water distribution system.

(c) If a pressure reducing valve not equipped with a bypass is installed in the cold water supply line to a water heater, a thermal expansion tank shall be installed in the cold water line near the water heater.

(7) Backflow and back siphonage protection. Protection against backflow shall be provided as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided. Backflow shall include both back pressure and back siphonage.

(a) An air gap shall provide the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size The minimum required air gap shall be:

a. Twice the effective opening of a potable water outlet; or

b. If the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, three (3) times the effective opening of the outlet.

3. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures

MINIMUM AIR GAPS FOR PLUMBING FIXTURES		
Fixture	Minimum Air Gap	
	When not affected by near wall (inches)	When affected by near wall (inches)
Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3

Drinking water fountains - single orifice not greater than 7/16 (0 437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than 1 inch	2 x diameter of effective opening	3 x diameter of effective opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps if spaced from the inside edge of the spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap if spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more vertical walls or ribs has not been determined. In this case, the air gap shall be measured from the top of the wall.

(b) A reduced pressure principle back pressure backflow preventer. A reduced pressure principle back pressure backflow preventer shall provide the best mechanical protection against backflow available and shall be considered equivalent to an air gap.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions. This device shall be a manufactured assembly consisting of two (2) independently acting check valves and including a shutoff valve at each end, and petcock and test gauge for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions. If applicable, an atmospheric type vacuum breaker shall be installed after the last cutoff valve on the water line. This device may operate under normal atmospheric pressure if the critical level (CL) is installed at the required height in accordance with the table in this paragraph:

CRITICAL LEVEL (CL) SETTINGS FOR ATMOSPHERIC TYPE VACUUM BREAKERS	
Fixture or Equipment	Method of Installation
Aspirators, ejectors, and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
On models without built-in vacuum breakers:	
Dental units	CL at least 6 in. above flood level rim of bowl
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprinkler or discharge outlet
Steam tables	CL at least 12 in above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

(f) Barometric loop. applicable to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. A backflow and back siphonage preventer shall be in an accessible location, preferably in the same room as the fixture or connection it protects. A device may be installed in a utility or service space. A device or air gap shall not be installed in a location subject to flooding or freezing.

(h) Inspection of devices. A periodic inspection shall be made of each backflow and back siphonage preventer to determine if it is in proper working condition. A reduced pressure principle back pressure backflow preventer shall be tested on at least an annual basis. Records shall be kept on each inspection.

(i) Approval of devices. Before a device for the prevention of backflow or back siphonage is installed, it shall be identified as meeting the applicable specifications as listed in the application chart included in paragraph (l) of this subsection A device installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person responsible for the maintenance of the system.

(j) Protection of potable water system. A potable water opening, outlet, or connection, except one (1) that serves a residential unit, shall be protected against backflow in accordance with paragraphs (a) through (l) of this subsection.

(k) Degree of hazard. The protection required at an outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard, if there is potential for contamination by a toxic substance or disease-causing organism;

2. Moderate hazard, if there is potential for contamination by a nontoxic but objectionable substance, or

3. Minor hazard, if there is potential for contamination by a generally nontoxic, nonobjectionable substance, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. An opening or outlet shall be protected by an air gap between the opening and flood level rim if possible. The acceptable protection for various types of outlets or connections shall be as shown in the tables in this paragraph:

APPLICATION TABLE				
TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE SPECIFICATIONS
Reduced pressure principle backflow preventer for high hazard cross connections	Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball-type test cocks.	All cross connections subject to backpressure or back siphonage if there is a high potential health hazard from contamination. Continuous pressure.	Main supply lines, commercial boilers, cooling towers, hospital equipment, processing tanks, laboratory equipment, waste digesters, car wash, sewage treatment, lawn sprinklers	ASSE No. 1013 AWWA C506 FCCCHR of U.S.C. CSA B.64.4 Sizes 3/4" - 10"

(A) Double check valve assembly for low hazard cross connections	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure if there is a low potential health hazard or nuisance. Continuous pressure.	Main supply lines, food cookers, tanks and vats, commercial pools	NONTOXIC	ASSE No. 1015 AWWA C506 FCCCHR of U.S.C. CSA B.64.5 Sizes 3/4" - 10"
(b) Dual check valve backflow preventer for low hazard applications	Two independent check valves Checks are removable for testing	Cross connections if there is a low potential health hazard and moderate flow requirements.	Post ground hydrants		ASSE No. 1024 Sizes 3/4" & 1"
(A) Backflow preventer with intermediate atmospheric vent for moderate hazard cross connections in small pipe sizes	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage if there is a moderate health hazard. Continuous pressure.	Boilers (small), cooling towers (small), dairy equipment residential		ASSE No. 1012 CSA B.64.3 Sizes 1/2" & 3/4"
(B) Backflow preventer for carbonated beverage machine	Two independent check valves with a vent to atmosphere	On potable water distribution lines serving beverage-dispensing equipment to prevent backflow of carbon dioxide gas and carbonated water into the water supply system.	Postmix carbonated beverage machine		ASSE 1022
(C) Laboratory faucet and double check valve with intermediate vacuum breaker in small pipe sizes for moderate to low hazard	Two independent check valves with intermediate vacuum breaker and relief vent	Cross connection subject to back pressure or back siphonage if there is a moderate to low health hazard.	Laboratory faucets and pipe lines, barber shop and beauty parlor sinks		ASSE No. 1035 (N-LF9)
(A) Atmospheric vacuum breakers for moderate to high hazard cross connections	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Process tanks, dishwashers, soap dispensers, washing machines		ASSE No. 1001 ANSI.A112.1.1 CSA B.64.1.1 FCCCHR of U.S.C. Sizes 1/4" - 3"
(B) Antisiphon pressure breakers for moderate to high hazard cross connections	Spring loaded single float and disc with independent 1st check. Supplied with shutoff valves and ball type test cocks.	This valve is designed for installation in a continuous pressure potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Laboratory equipment, cooling towers, comm. Laundry machines, swimming pools, commercial plating tanks, Ig Toilet total & urinal facilities, degreasers, photo tanks, livestock water systems, lawn sprinklers		ASSE No. 1020 CSA B.64 1.2 FCCCHR of U.S.C. Sizes 1/2" - 2"
(C) Hose connection vacuum breakers for residential and industrial hose sup-ply outlets	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose bibs, service sinks, hydrants		ASSE No. 1011 CSA B.64.2 Size 3/4" Hose

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

Type of Connection	Degree of Hazard				Acceptable Protection			
						Backflow		Backsiphonage
	Severe	Moderate	Minor	Air Gap	Reduced Pressure Device	Double Check Valve Assembly	Pressure Type Vacuum Breaker	Atmospheric Type Vacuum Breaker
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling:								
1 Toxic substance	X			X	X			

2. Nontoxic substance		X		X	X	X		
B. Boilers								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
C Gravity due to obvious site conditions subject to								
1. Contamination by toxic substances	X			X	X			
2. Contamination by nontoxic substances		X		X	X	X		
II. Water outlets and connections not subject to back pressure·								
A. Connection to sewer or sewage pump	X			X				
B. Outlet to receptacles containing toxic substances	X			X	X		X	X
C. Outlet to receptacles containing nontoxic substances		X		X	X	X	X	X
D. Outlet into domestic water tanks			X	EACH CASE TREATED SEPARATELY				
E. Flush valve toilets	X			X	X		X	X
F Flush valve urinals		X		X	X		X	X
G. Outlets with hose attachments subject to contamination from:								
1. Toxic substance	X			X	X		X	X
2. Nontoxic substance		X		X	X	X	X	
H. Outlets to recirculating cooling tower								
1. With chemical additives	X			X	X			
2 Without chemical additives		X		X	X	X		

Section 3. Water Required. (1) A building equipped with a plumbing fixture and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In a building used as a residence or a building in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4 Water Service. (1) The water service piping to a building shall:

(a) Not be less than three-fourths (3/4) inch nominal pipe size; and

(b) Be of sufficient size to permit a continuous and ample flow of water to each fixture in the building

(2) Except as provided in this subsection, the underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth. The pipe may be placed in the same trench if:

(a) The bottom of the water service pipe at all points is at least eighteen (18) inches above the top of the sewer at its highest point,

(b) The water service pipe is placed on a solid shelf excavated at one (1) side of the common trench; and

(c) The number of joints in the water service pipe is kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of another piping system.

(2) Piping which has been used for a purpose other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing a water closet or urinal, if the water is piped in an independent system.

(a) If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified.

(b)1. An outlet on the nonpotable water distribution system used for a drinking or domestic purpose shall be permanently posted. DANGER - UNSAFE WATER.

2. Each branch, fitting, or valve shall be identified by the word - "NONPOTABLE WATER" either by a sign or brass tag that shall be permanently affixed to the pipe, fitting, or valve.

3. The identification marking shall not be concealed and shall be maintained by the owner.

(4) A backflow device or cross-connection control device shall be approved by the department.

(5) A combination stop and waste valve, cock, or hydrant shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with a public water supply.

(7) Water used for cooling of equipment or in another process shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or used for a nonpotable purpose on written approval of the plumbing official.

(8) Hose connections other than those intended for clothes washing machines, frost proof burial hydrants, and water heater drain valves shall be equipped with a vacuum breaker ASSE 1011 for areas not subject to freezing and a vacuum breaker ASSE 1019 for areas subject to freezing.

Section 6. Water Supply to Fixtures. (1) A plumbing fixture shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition.

(2) A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve.

(3) The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of a water closet, urinal, or similar fixture.

(4) If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valve shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage.

(5) The fixture shall have a vacuum breaker.

(6) A plumbing fixture, device or appurtenance shall be installed in a manner that shall prevent a possibility of a cross connection between the potable water supply system, drainage sys-

tem, or other water system.

Section 7. Connections to Boilers. (1) A potable water connection to a boiler feed water system in which a boiler water conditioning chemical is introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where a chemical is introduced.

(2) A boiler shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. More than three (3), one-half (1/2) inch fixture branches shall not be supplied from a one-half (1/2) inch pipe.

(2) The schedule in this subsection shall be used for sizing the water supply piping to a fixture. The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and shall be brought to the floor or wall adjacent to the fixture. A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res)	1/2
Kitchen sink (com)	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type)	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In a building supply system in which a device or appurtenance is installed utilizing a quick acting valve that causes noise due to water hammer, a protective device, including an air chamber or approved mechanical shock absorber, shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If a mechanical shock absorber is installed, the absorber shall be in an accessible place.

(b) If a mechanical device is used, the manufacturer's specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. (1) Water supply piping for a potable water system shall be as follows:

(a) Galvanized wrought iron;

(b) Galvanized steel;

(c) Brass;

(d)Types K, L, and M copper;

(e) Cast iron;

(f) Types R-K, R-L, and R-M brass tubing;

(g) Fusion welded copper tubing produced and labeled as ASTM B-447-2002 and ASTM B-251;

(h) DWV welded brass tubing produced and labeled as ASTM B587 [~~B-687-97~~];

(i) Seamless stainless steel tubing, Grade H, produced and labeled as ASTM A268/268M [~~A-268-05a~~];

(j) Filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold);

(k) Polyethylene (PE) plastic pipe produced and labeled as ASTM D2239 [~~D-2239-03~~] or ASTM F-714;

(l) Cross-linked polyethylene (PEX) pipe produced and labeled as ASTM F-876 for cold water and ASTM F-877 for hot or cold water applications;

(m) Cross-linked Polyethylene/Aluminum/Cross-linked Polyethylene (Pex-Al-Pex) pipe produced and labeled as ASTM F-1281;

(n) Polyethylene/Aluminum/Polyethylene (Pe-Al-Pe) pipe produced and labeled as ASTM F-1282;

(o) Copper tubing size PE produced and labeled as ASTM D-2737 for water service, if installed with compression couplings;

(p) Polyvinyl chloride (PVC) plastic pipe produced and labeled as ASTM D1785 [~~D-1785-06~~];

(q) Chlorinated Polyvinyl chloride (CPVC) plastic pipe produced and labeled as ASTM D2846 [~~D-2846-06~~];

(r) Schedule 80 chlorinated polyvinyl chloride (CPVC) plastic pipe shall meet ASTM F441;

(s) Schedule 80 chlorinated polyvinyl chloride (CPVC plastic solvent fittings shall meet ASTM F439;

(t) Schedule 80 chlorinated polyvinyl chloride (CPVC) plastic threaded fittings shall meet ASTM F437;

(u) Schedule 80 chlorinated polyvinyl chloride (CPVC) plastic pipe and fittings shall be installed using primer meeting ASTM F656 and solvent cement meeting ASTM F493;

(v) Polyvinyl chloride (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 pipe produced and labeled as ASTM D-2241-05;

(w)[~~(c) Polybutylene (PB) plastic pipe produced and labeled as ASTM D-3309-96a with brass or copper fitting,~~

~~(t)~~] Fusion welded Polypropylene Pipe Products which meet NSF Standards 61 and 14 and ASTM F2389 [~~2389~~]. These products are approved for above-ground use only and using pipe sizes five-eighths (5/8) inch through ten (10) [~~six (6)~~] inch; or

(x)[~~(u)~~] Push-fit fitting systems which meet the ASSE Standard 1061. These systems are approved for above-ground use only using pipe sizes up to two (2) inches.

(2) A plastic pipe or fitting shall bear the NSF seal of approval.

(3) Polybutylene pipe utilizing an insert fitting of brass or copper shall use a copper clamping ring.

(4) A polybutylene hot and cold water connector to a lavatory, sink, or water closet shall be produced and labeled as ASTM D3309[~~-D-3309-96a~~], and polybutylene plastic pipe shall be produced and labeled as ASTM 2662 for a cold water application.

(5) A fitting shall be brass, copper, approved plastic, galvanized cast iron, or galvanized malleable iron. Piping or a fitting that has been used for another purpose shall not be used for the water distribution system.

(6) Each joint in the water supply system shall be made of a screw, solder, or plastic joint. A cast iron water pipe joint may be caulked, screwed, or machine drawn.

(7) If Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or passes through a concrete floor, it shall be wrapped with an approved material to permit expansion or contraction.

(8) Polyethylene or PVC shall not be used below ground under a house or building. If a chlorinated polyvinyl chloride (CPVC) joint or connection is installed below ground under a house or building, the water distribution system shall be tested to at least 100 pounds per square inch before backfilling. The applicable requirements of 815 KAR 20:060 and 815 KAR 20:073 shall be met.

(9) Joints between copper tubing and galvanized steel pipe. The joint between ferrous piping and copper or copper-alloy piping shall be made with a dielectric fitting or other insulating fitting to prevent electrolysis.

Section 11. Temperature and Pressure Control Devices for Shower Installations. A temperature or pressure balance device to prevent a sudden unanticipated change in water temperature shall be installed to serve each shower compartment and shower-bath combination.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be a full port valve and be accessible from within the occupied space and provided with a drip or drain valve. A pit or similar type installation shall not be used for a potable water supply shutoff valve.

(2) A pressure or gravity tank shall have its supply line valved at or near its source.

(3) A family unit in a two (2) family or multifamily dwelling shall have the unit controlled by an arrangement of shutoff valves which will permit the unit to be shutoff without interfering with the cold water supply to another family unit or portion of the building.

(4) In a building other than a dwelling, a shutoff valve shall be installed to permit the water supply to the equipment to be isolated without interference with the supply to other equipment.

(5) A fixture or group of bath fixtures shall be valved and a lawn sprinkler opening shall be valved. In residential construction, each fixture, except a bathtub or shower, shall be valved individually or as a group of fixtures.

(6) A group of fixtures or a fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and serving this equipment. In residential dwellings, the shutoff valve shall be placed within three (3) feet of the water heater and be accessible from the accessible side of the water heater.

Section 13. Water Supply Protection. A concealed water pipe, storage tank, cistern, or other exposed pipe or tank subject to freezing temperatures shall be protected against freezing. A water service shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. (1) A temperature and pressure relief device shall:

(a) Be installed on each water heater on the hot water side not more than three (3) inches from the top of the heater;

(b) If a marked opening is provided on the water heater by the manufacturer for the temperature and pressure relief device, be installed according to the manufacturer's recommendation; and

(c) Be of a type approved by the department [office] in accordance with this administrative regulation and 815 KAR 20:020.

(2)(a) If a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor.

(b) If a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground.

(c) The relief device may discharge through an air gap to a sump basin, service sink, open receptacle or other point of discharge in which equivalent safety shall be provided as approved by the Division of Plumbing.

(3) A relief device shall be installed on a pneumatic water system.

Section 15. Protection of a Private Water Supply or Source. A private water supply or source shall be protected from pollution. Approval shall be obtained from the Division of Plumbing prior to using the private water supply or source.

Section 16. Domestic Solar Water Heaters. A domestic solar water heater may have a "single wall heat exchanger" if the following conditions are met:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent;

(2) The heat exchanger is pretested by the manufacturer to 450 pounds per square inch;

(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. (1) A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater.

(2) Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided.

(3) The water inlet to the heat exchange vessel shall be provided with a check valve. There shall be provided adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) pounds per square inch above the maximum water pressure at the point of installation, if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device.

(4) Condensate drain water shall be piped in accordance to the plumbing code and it shall not be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in an area subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats below Rim Supply. A tank or vat with potable water supply below the rim shall be subject to the following requirements:

(1) If a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the table in this subsection, the overflow pipe shall be provided with an air gap as close to the tank as possible;

Sizes of Overflow Pipes for Water Supply Tanks			
Maximum capacity of water supply line to tank	Diameter of Overflow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of overflow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate at a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet, closed; and

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch piping and its run shall not exceed 140 feet between the water heater and the heating unit. The applicable requirements established in 815 KAR 20 070 shall be met.

Section 20. Fire Protection Systems. A fire protection system using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home.

(2) All materials, including the pipe or fitting used for a connection, shall conform with the State Plumbing Code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space.

(a) The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control.

(b) The ground surface around the riser pipe shall be graded to

divert surface drainage.

(c) The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing

(d) An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather.

(e) A shutoff valve may be placed below the frost depth on the water service line, but this valve shall not be a stop-and-waste cock.

Section 22. Conservation of water shall comply with the standards established in 815 KAR 20.070.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary Public

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled 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 June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the types of piping and pipe sizes required for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

(b) The necessity of this administrative regulation: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced and adds newer products

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to be used within the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced and add newer products.

(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: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced and add newer products.

(b) The necessity of the amendment to this administrative regulation: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced and add newer products.

(c) How the amendment conforms to the content of the authorizing statutes: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced and add newer products.

(d) How the amendment will assist in the effective administration of the statutes: Will assist the department and plumbers in utilizing updated standards and newer products.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department of Housing, Buildings, and Construction, plumbers and plumbing inspectors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Plumbers and inspectors will no longer be concerned with outdated, non-existing standards for water supply and distribution. Newer products have been identified and accepted for use in Kentucky and by using such, plumbers will be in compliance with these standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Plumbers will be utilizing updated standards and new products.

(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 implementation and enforcement of this administrative regulation: No funding is associated with the amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING. Is tiering applied? No tiering is applied as this amendment deletes conflicting language.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Housing, Buildings, and Construction, plumbers and plumbing inspectors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Under authorization granted to the Department of Housing, Buildings and Construction by KRS 318.130, the Department is directed to promulgate and amend the Kentucky State Plumbing Code.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulatory amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first

year? There will be no additional cost as this administrative regulation amendment adds new products, updates standards, deletes nonexisting standards and deletes a product that is no longer produced.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:130. House sewers and storm water piping; methods of installation.

RELATES TO: KRS 318.010, 318.015, 318 130, 318.150, 310.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department [office], after approval by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky for the construction of house sewers and storm water piping. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings, and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation identifies the materials and methods of installation that may be used in the construction of house sewers or storm water piping.

Section 1. Independent System The drainage and plumbing system of new building and of a new work installed in an existing building shall be separate and independent of other buildings except as otherwise provided in this administrative regulation. A building shall have an independent connection with either a public or private sewer or sewer system.

Section 2. Exception. If a building stands in the rear of other buildings or on an interior lot and a sewer connection cannot be made available to the rear building through an adjoining alley, court, yard, or driveway, the sewer from the front building may be extended to the rear building and it shall be considered as one (1) sewer. This exception shall not apply to corner lots if a sewer connection is available from the street or alley or to a new or existing building which abuts a street or alley

Section 3. Connection with Private Sewage Disposal System. If a sewer is not available, the house drain from a building shall connect with an approved private sewage disposal system.

Section 4 Excavations. An excavation made for the installation of a house sewer shall be open trench work, and the trenches shall be kept open until the piping has been inspected, tested, and approved.

Section 5. Depth of Sewer at the Property Line. (1) The sewer at the property line shall be at a sufficient depth to properly serve a plumbing connection installed in the basement of a building.

(2)(a) A house sewer shall be laid on a grade of not less than one-eighth (1/8) inch nor more than one-fourth (1/4) inch per foot.

(b) A sewer shall have at least an eighteen (18) inch cover.

(c) Sewer piping installed under property subject to vehicular traffic (e.g., a driveway, parking lot, or similar location) shall have at least a twenty-four (24) inch cover unless constructed of cast iron piping If less than a twenty-four (24) inch cover is available, sewer piping shall be encased in a minimum of six (6) inches of concrete on each side and the top.

(d) A sewer shall be backfilled by hand and tamped six (6) inches above the piping, or filled with six (6) inches grillage above the piping.

(e) Each joint in cast iron and vitrified clay pipe shall be constructed to comply with 815 KAR 20:060, Sections 4 and 5.

Section 6. New House Sewer Connections. A house sewer installed where a private sewerage system has been discarded may connect to the house drain, if the existing plumbing system meets the State Plumbing Code.

Section 7. Materials for House Sewers. A house sewer or combined sewer shall be made of the following:

(1) Extra heavy cast iron pipe;

(2) Service weight cast iron;

(3) [~~Aluminum;~~

~~(4)~~] Vitrified clay;

(4)[~~(5)~~] Concrete;

(5)[~~(6)~~] Coextruded composite PVC pipe produced and labeled ASTM F-1488;

(6)[~~(7)~~] PVC or ABS plastic pipe schedules 40 and 80;

(7)[~~(8)~~] Cellular core PVC produced and labeled as ASTM F-891;

(8)[~~(9)~~] Cellular core ABS produced and labeled as ASTM 628;

(9)[~~(10)~~] Truss pipe;

(10)[~~(11)~~] Extra heavy SDR 35 pipe;

(11)[~~(12)~~] Type PS 46, PVC in sizes four (4) inches through fifteen (15) inches produced and labeled as ASTM F789 [~~F-789-82~~];

(12)[~~(13)~~] PVC ribbed pipe produced and labeled as ASTM F794 [~~795~~]; or

(13)[~~(14)~~] Polyethylene pipe produced and labeled as ASTM F-714.

Section 8 Material for Storm Sewers Inside Buildings. (1) A storm sewer inside of a building extending to a point two (2) feet outside a building in sizes eight (8) inches and smaller shall be made of the following:

(a) Cast iron pipe;

(b) Aluminum; or

(c) Schedule 40 ABS or PVC DWV pipe or PVC pipe produced and labeled as ASTM F-1488.

(2) A storm sewer in a size of ten (10) inches and larger shall be made in the following:

(a) Cast iron;

(b) Aluminum;

(c) Schedule 40 ABS or PVC DWV pipe;

(d) SDR 35;

(e) Vitrified clay or concrete conforming to appropriate commercial specifications with approved joints; or

(f) Polyethylene pipe produced and labeled as ASTM F-714.

(3) Primary and secondary roof drains shall comply with the following requirements:

(a) Roof drains shall have strainers extending not less than four (4) inches above the surface of the roof immediately adjacent to the roof drain. Strainers shall have an available area not less than one and one-half (1 1/2) times the area of the conductor or leader to which the drain is connected:

(b) Roof drain strainers for use on sun decks, parking decks, and similar areas that are normally services and maintained may be of the flat surface type, installed level with the deck, with an available inlet area not less than two (2) times the area of the conductor or leader to which the drain is connected;

(c) Secondary (emergency) roof drains or scuppers shall be provided where the roof perimeter construction allows ponding if the primary roof drains become blocked;

(d) Separate systems required. Secondary roof drain systems shall have piping and point of discharge separate from the primary system. Discharge shall be above grade in a location which would normally be observed by the building occupants or maintenance personnel; and

(e) Primary and secondary drains must be sized in accordance with 815 KAR 20:130, Section 11, of the Kentucky State Plumbing Code.

Section 9. Change of Direction. A change in direction of a sewer shall be made only with:
(1) Long curves;
(2) Forty-five (45) degree wyes;
(3) Half wyes;
(4) Quarter, sixth, eighth or sixteenth bends; or
(5) Sanitary tees installed on their back or on their sides at an angle of not more than forty-five (45) degrees.

Section 10. Size of House Sewers and Horizontal Branches. The minimum size of a house sewer shall not be less than four (4) inches nor less than that of the house drain. A house sewer receiving a branch shall be sized in the same manner as a house drain. The house drains shall be installed in accordance with 815 KAR 20 090.

Section 11. Size of Storm Systems. The required size of a storm sewer shall be determined on the basis of the total drained area in horizontal projection in accordance with table in this section. A storm sewer shall not be laid parallel to or within two (2) feet of a bearing wall. The storm sewer shall be laid at a sufficient depth to protect it from freezing.

Diameter of pipe - inches	Maximum drained roof area square feet*	
	Slope 1/8 in. fall to 1 ft.	Slope 1/4 in. fall to 1 ft.
3	N/A	1,160
4	1,880	2,650
5	3,340	4,720
6	5,350	7,550
8	11,500	6,300
10	20,700	29,200
12	33,300	47,000
15	59,500	84,000

*The calculations in this table are based on a rate of rainfall of four (4) inches per hour.

Section 12. Combined Storm and Sanitary Sewer System. If a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area, and the total fixture units, adding the product to the drained area and applying the sum from the table for storm water sewers in Section 11 of this administrative regulation. A combined house drain or house sewer shall not be less than four (4) inches in diameter, and a combined house drain or house sewer shall not be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

CONVERSION FACTORS FOR COMBINED STORM AND SANITARY SYSTEM								
	Number of fixture units on sanitary system							
Drained roof area in square feet	Up to 6	7 to 18	19 to 36	37 to 60	61 to 96	97 to 144	145 to 216	217 to 324
Up to 120	180	105	60	45	30	22	18	15
121 to 240	160	98	57	43	29	21	17.6	14.7
241 to 480	120	75	50	39	27	20	16.9	14 3
481 to 720	75	62	42	35	24	18	15.4	13 2
721 to 1,080	54	42	33	29	20	15	13 6	12.1
1,081 to 1,620	30	18	16	15	12	11.5	11.1	10 4
1,621 to 2,430	15	12	11	10 5	9.1	8 8	8 6	8.3
2,431 to 3,645	7.5	7.2	7.0	6 9	6 6	6 5	6 4	6.3
3,646 to 5,460	2.0	2.4	3 0	3 3	4 1	4 2	4 3	4.4
5,461 to 8,190	0	2 0	2.1	2 2	2 3	2.4	2.5	2.6
8,191 to 12,285	0	0	2 0	2 1	2.1	2.2	2.3	2.3
12,286 to 18,420	0	0	0	2.1	2 1	2.1	2 2	2.2
18,421 to 27,630	0	0	0	0	2.0	2.1	2.2	2.2
27,631 to 40,945	0	0	0	0	0	2 0	2 1	2.2
40,946 to 61,520	0	0	0	0	0	0	2 0	2.1
Over 61,520	0	0	0	0	0	0	0	2 0

	Number of fixture units on sanitary system							
Drained roof area in square feet	325 to 486	487 to 732	733 to 1098	1,099 to 1644	1,645 to 2466	2,467 to 3702	3,703 to 5556	Over 5556
Up to 120	12	10 2	9 2	8 4	8 2	8 0	7.9	7.8
121 to 240	11.8	9.9	9.1	8 3	8.1	8.0	7.9	7.8
241 to 480	11.5	9 7	8 8	8 2	8 0	7.9	7.8	7.7
481 to 720	10.8	9 2	8 6	8 1	7.9	7.9	7 8	7.7
721 -1,080	10.1	8 7	8 3	8 0	7.8	7 8	7.7	7.6
1,081 - 1,620	9 8	8.4	8.1	7.9	7.7	7.7	7.6	7.5
1,621 - 2,430	8 0	7 9	7.8	7.7	7.6	7.5	7.4	7.4
2,431 - 3,645	6.2	6 3	6 4	6 4	6.8	7.0	7.1	7.2
3,646 - 5,460	4 5	4.7	5 0	5 1	6.1	6 4	6 9	6.9
5,461 - 8,190	2.8	3 2	3 7	4 6	5.0	5 6	6.2	6.4
8,191 - 12,285	2.4	2.5	2 6	2.7	3.5	4.5	5.2	5.6
12,286 - 18,420	2.3	2.3	2.4	2 4	2.6	3 2	4.2	4.7
18,421 - 27,630	2 2	2 3	2 3	2 3	2.4	2.5	2.8	3.1
27,631 - 40,945	2.2	2.2	2.2	2 2	2 2	2.2	2 3	2.4
40,946 - 61,520	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Over 61,520	2 0	2 0	2 0	2 0	2 0	2 0	2 0	2.0

(1) For a building constructed after August 1, 1996, each plumbing fixture or opening connecting to a combination sanitary and storm sewer system shall either:

(a) Be installed above the elevation of the cover of the nearest manhole serving the main; or

(b) Discharge through a sewage ejector to the combined sewer

system at an elevation high enough to prevent flooding of the building

Section 13. House Sewer in Undisturbed or Filled Ground. (1) A house sewer laid in undisturbed ground shall be laid on at least four (4) inches of pea gravel, sand or other approved grillage.

(2) A house sewer laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other support that shall be approved by the department [office].

(3) A support in filled ground shall be on a ten (10) foot center to a solid footing, either undisturbed earth or rock.

(4) A house sewer constructed of flexible thermoplastic sewer piping shall be installed with at least six (6) inches of gravel on the bottom, top and sides of the piping

Section 14. Storm Sewers in Undisturbed or Filled Ground. (1) A storm sewer laid in undisturbed ground shall not require grillage.

(2) A storm sewer laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support that shall be approved by the office.

(3) A support in filled ground shall be on a ten (10) foot center to a solid footing, either undisturbed earth or rock.

Section 15. Drainage Below Sewer Level (Public). In a public building in which the whole or part of the building drain and plumbing system lies below the level of the main sewer, sewage and waste shall be lifted by a device that complies with Sections 17 and 18 of this administrative regulation and discharged into the building sewer.

Section 16. Drainage Below Sewer Level (Residential). (1) In a home where the house sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump appropriate for that installation.

(2) The sump pit shall:

(a) Be gas and air tight; and

(b) Be constructed of:

1. Poured or precast concrete;

2. Approved fiberglass; or

3. Polyethylene material.

(3) The sump pit shall be provided with a two (2) inch vent which may also act as a waste and vent for a laundry tray.

(4) The pump discharge piping shall discharge into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade.

(5) The sump pit shall be provided with a tight-fitting concrete cover.

(6) On the outside of the building, this waste piping shall connect into a four (4) inch by two (2) inch sanitary tee which shall connect into a four (4) inch P trap and then into the sanitary sewer. The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2) inches above the finished grade and shall be provided with a ventilated cap.

Section 17. Sumps and Receiving Tanks. A subsoil drain shall discharge into an air tight sump or receiving tank located to receive the sewage by gravity. The sewage shall be lifted and discharged into the house sewer by a pump, ejector or an equally efficient method. Sewage sumps shall be a minimum twenty four (24) inches in diameter and no less than twenty four (24) inches in depth. Systems which rely solely on a pump shall be equipped with both an audible and visual alarm to be placed within the occupied space. The sump shall automatically discharge.

Section 18. Ejectors, Vented. (1) A sewage ejector serving a residential installation shall be vented with a two (2) inch vent.

(2)(a) Except as provided in paragraph (b) of this subsection, an ejector serving a commercial or industrial installation shall be vented with a three (3) inch vent.

(b) If a three (3) inch vent stack is serving a fixture that empties into the ejector pit and is located within twenty-five (25) feet of the pit, the ejector may be revented with a two (2) inch vent back to the three (3) inch vent stack. The ejector vent shall not be smaller than that recommended by the manufacturer of the pump.

(3) A portion of the building drainage system that is above the cover of the manhole serving the main that can flow by gravity to a sewer shall be installed for gravity flow to the combined sanitary and storm sewer, except for a system designed otherwise by a licensed professional engineer.

Section 19. Ejector Power: Motors, Compressors, and Air Tanks. (1) A motor, air compressor, or air tank shall be located where it is open for inspection and repair at all times.

(2) An air tank shall be proportioned to furnish sufficient air at suitable pressure to the ejector to completely empty the sump or storage tank with the compressor not operating.

(3) The end pressure in the tank shall not be less than two (2) pounds for each foot of height through which sewage is raised.

Section 20. Ejectors for Subsoil Drainage. If a subsoil catch basin is installed below the sewer level, an approved automatic ejector shall be used. The ejector or a device raising subsoil water shall discharge into a properly trapped fixture or into a storm-water drain.

Section 21. Drainage of Yards, Areas, Roofs, and Traps. (1) A roof, paved area, court, or courtyard shall be drained into one (1) of the following:

(a) A storm water system;

(b) A combined sewerage system; or

(c) A surface drainage area unless prohibited by the local health department or sewer district.

(2) A yard, roof, paved area, court, or courtyard shall not be drained into a sewer intended for sewage only.

(3) Traps.

(a) If a drain is connected to a combined sewerage system, it shall be trapped.

(b) If a roof leader, conductor, or gutter opening is located more than ten (10) feet from a window, scuttle, or air shaft, a trap shall not be required.

(c) A trap shall be set below the frost line or on the inside of the building.

(d) If a drain is not connected to a combined sewer, a trap shall not be required.

Section 22. Size of Rain Water Leader. An inside leader shall not be less size than the following:

Area of Roof (In Square Feet)	Leader, Diameter (Inches)
Up to 90	1 1/2
91 to 270	2
271 to 810	3
811 to 1,800	3 1/2
1,801 to 3,600	4
3,601 to 5,500	5
5,501 to 9,600	6

Section 23. Inside Conductors or Roof Leaders. (1) If a conductor or roof leader is placed within the walls of a building, or in an interior court or ventilating pipe shaft, it shall be constructed of:

(a) Cast iron pipe;

(b) Galvanized wrought iron;

(c) Galvanized steel;

(d) Copper;

(e) [~~Aluminum;~~

~~(f)~~] Schedule 40 ABS/PVC DMV pipe; or

(f)[~~(g)~~] Reinforced thermosetting resin pipe produced and labeled as ASTM F1113 [~~D-2996~~] (red and silver thread).

(2) The vertical distance of PVC or ABS conductors shall not exceed forty-five (45) feet from the base to the penetration through the roof. Provisions shall be made for the expansion and contraction of plastic pipe.

Section 24. Outside Conductors. (1) If an outside sheet metal conductor or downspout is connected to a house drain, it shall be connected by means of a cast iron pipe extending vertically at least

one (1) foot above the grade line.

(2) If the downspout runs along a public driveway without a sidewalk, it shall be placed in a niche in the walk, protected by wheel guards, or enter the building through the wall at a forty-five (45) degree slope at least twelve (12) inches above the grade.

Section 25. Defective Conductor Pipes. If an existing sheet metal conductor pipe within the walls of a building becomes defective, the conductor shall be replaced by one which conforms to this administrative regulation.

Section 26. Vent Connections with Conductors Prohibited. (1) A conductor pipe shall not be used as a soil, waste or vent pipe.

(2) A soil, waste, or vent pipe shall not be used as a conductor.

Section 27. Overflow Pipes. An overflow pipe from a cistern, supply tank, expansion tank, or drip pan shall connect indirectly with a house sewer, house drain, soil or waste pipe.

Section 28. Subsoil Drains, Below Sewer Level. A subsoil drain shall discharge into a sump or receiving tank and shall be automatically lifted and discharged into the storm drainage system or upon the ground outside the building it serves.

Section 29. Approvals of New Sewer Connections to Existing Buildings. If the local health department or sanitary sewage system board, plant, district, or treatment plant owner prohibits the discharge of a basement floor drain or other apparatus into the sanitary sewer system, an existing basement floor drain or sump pump apparatus shall comply with the new construction requirements of this administrative regulation and be inspected prior to the approval of a connection for a new sewer line.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary Public

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies the materials and methods of installation that may be used in the construction of house sewers or storm water piping.

(b) The necessity of this administrative regulation: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to be used within the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced.

(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: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced.

(b) The necessity of the amendment to this administrative regulation: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced.

(c) How the amendment conforms to the content of the authorizing statutes: Deletes standards that no longer exist and updates existing standards. It will also delete a product that is no longer produced.

(d) How the amendment will assist in the effective administration of the statutes: Will assist the department and plumbers in utilizing updated standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Plumbers and inspectors will no longer be concerned with outdated, non-existing standards relating to house sewers and storm water piping. Newer products have been identified and accepted for use in Kentucky and by using such, plumbers will be in compliance with these standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the amendment of this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Plumbers will be utilizing updated standards relating to house sewers and storm water piping.

(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 implementation and enforcement of this administrative regulation: No funding is associated with the amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) No tiering is applied as this amendment deletes conflicting language.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors will be impacted by this amendment.

3. Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. The Department of Housing, Buildings and Construction is authorized under KRS 318.130 to promulgate and amend the Kentucky State Plumbing Code.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulatory amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation deletes non-existing standards and updates existing standards. It will also delete a product that is no longer produced.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:170. Mobile home park waste systems and connections.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130, EO 2008-507
NECESSITY, FUNCTION, AND CONFORMITY: The department [office] is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings, and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation relates to mobile home park waste systems and connections and it specifies the material as well as the method that shall be used in installing the necessary plumbing to serve mobile homes. [~~This amendment is necessary to bring the administrative regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.~~]

Section 1. Materials. All materials shall conform to other sections of this code.

Section 2. Sewers. The main and branch sewers for the connections of mobile homes shall be laid at a uniform grade and alignment and all joints shall be water tight. Clean-outs shall be provided at intervals not to exceed 100 feet for main and branch sewers in sizes six (6) inches and smaller. They shall be extended to the grade with cast-iron soil pipe and shall be provided with a [~~brass~~] clean-out plug. A four (4) inch concrete pad, eighteen (18) inches square, shall be provided around each clean-out. All main and branch sewers eight (8) inches and larger shall not require clean-outs but shall require standard manholes at intervals not to exceed 400 feet as well as in all changes in direction. Each mobile home shall be provided with a four (4) inch sewer. A three (3) inch waste connection shall be provided and extended one (1) inch above the grade [~~with cast-iron pipe~~] using a [~~cast-iron ferrule with~~] a three (3) inch standard female thread. A four (4) inch concrete pad twenty-four (24) inches square shall be provided around the waste opening. A three (3) inch screw plug shall be fastened by a chain to the concrete pad which shall be used when the mobile home opening in not in use. The waste pipe connection between the mobile home and the sewer waste opening shall be a waterproof connection constructed of either cast-iron, schedule 40 steel pipe, copper pipe or schedule 40 ABS or PVC piping.

Section 3. Individual Residential Mobile Home Waste System and Connection. An individual residential mobile home shall either be connected to a municipal sewer system or to an approved private sewage disposal system in accordance with other sections of this code. Each mobile home shall be provided with at least a three (3) inch [~~cast-iron soil pipe~~] waste connection to the house sewer. All piping that does not have at least an eighteen (18) inch cover shall be cast-iron pipe. Waste connections between the permanent [~~cast-iron~~] piping and the mobile home waste connection shall be a waterproof connection constructed of either cast-iron, schedule 40 steel pipe, copper pipe or schedule 40 ABS or PVC piping.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary Public
APPROVED BY AGENCY: April 13, 2009
FILED WITH LRC: April 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation relates to mobile home park waste systems and connections and it specifies the material as well as the method that shall be used in installing the necessary plumbing to serve mobile homes.

(b) The necessity of this administrative regulation: Updates the code to allow existing material.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to be used within the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Updates the code to allow existing material.

(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: Updates the code to allow existing material.

(b) The necessity of the amendment to this administrative regulation: Updates the code to allow existing material

(c) How the amendment conforms to the content of the authorizing statutes: Updates the current code.

(d) How the amendment will assist in the effective administration of the statutes: Will assist the department and plumbers in utilizing updated codes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Plumbers and inspectors will follow updated code provisions which all existing approved materials are to be used.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Plumbers will be utilizing updated standards relating to mobile home park waste systems and connections.

(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 implementation and enforcement of this administrative regulation: No funding is associated with the amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? No tiering is applied as this amendment deletes conflicting language.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Department of Housing, Buildings and Construction is authorized by the provisions contained in KRS 318.130 to promulgate and amend the Kentucky State Plumbing Code.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will have no impact on expenditures or revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulatory amendment will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory amendment will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation relates to the addition of a new definition.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:195. Medical gas piping installations.

RELATES TO: KRS 198B.050, 318.010

STATUTORY AUTHORITY: KRS 198B.050(2), (5), 318.130, EO 2008-507

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.010(4)(e) includes in the definition of "plumbing" medical gas piping. KRS 318.134 requires that a person shall obtain a permit from the office prior to the installation of plumbing and that the department [~~office~~] shall cause inspections as it may deem necessary. EO 2008-507, effective June 16, 2008, reorganized the Office of Housing, Buildings, and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. [~~EO 2003-064 filed December 23, 2003 created the Environmental and Public Protection Cabinet. EO 2004-031 filed January 6, 2004 changed the Department of Housing, Buildings and Construction to the Office of Housing, Buildings and Construction.~~]This administrative regulation defines the term "medical gas piping" in accordance with industry practice; identifies the standard which a licensed plumber shall use when installing this piping, and identifies the permitting, fee and inspection requirements for this special type of installation.

Section 1. Definitions. (1) "Health care facility" means a hospital, nursing home, limited care facility, clinic, ambulatory care center, or office practice medical or dental office as defined in NFPA 99C.

(2) "Medical gas piping" means a permanent fixed piping system in a health care facility which is used to convey oxygen, nitrous oxide, nitrogen, carbon dioxide, helium, medical air and mixtures of these gases from its source to the point of use and includes the fixed piping associated with a medical, surgical or gas scavenging vacuum system, as well as a bedside suction system.

(3) "NFPA" means the National Fire Protection Association.

Section 2. Standards and Procedures. (1) Installation standards. A new medical gas piping installation or an addition to an existing medical gas piping system shall comply with the applicable provisions of "NFPA 99C, Standard on Gas and Vacuum Systems, 2002 Edition".

(2) Permit required. The licensed master plumber shall make application for a permit to install medical gas piping prior to the installation. To obtain the permit, the master plumber shall:

(a) Pay a fee of thirty-five (35) dollars base permit [~~twenty-eight (28) dollars~~] for the medical gas system for each building;

(b) Five (5) dollars per opening; and

(c) [~~(b)~~] Identify the person who shall perform the installation. The person making the installation shall be a certified medical gas installer as required by NFPA 99C [~~brazer~~] as well as a licensed journeyman plumber.

(3) Supervision of the master. It shall be the responsibility of the licensed master plumber to assure that the person doing the installation:

(a) [~~The person doing the brazing;~~

~~1.~~] Is properly certified as required by NFPA 99C;

(b) [~~and~~

~~2.~~] Uses the proper products and stores them correctly; and

(c) Requests and receives all inspections at the initial pressure test for the complete system from a certified state plumbing inspec-

tor. [~~(b) Required testing and purging of the piping system is done prior to putting the system into service.~~]

(4) Final approval. Upon completion of the installation, the master plumber shall furnish the Division of Plumbing with certification from the medical gas system verifier as required by NFPA 99C [~~the following certifications:~~

~~(a) Certification from the medical gas supplier or other qualified third party that the installation, including each outlet, meets the testing and purging requirements of the code, and~~

~~(b) Certification that the installation was performed by the certified brazer~~].

Section 3. Incorporation by Reference. (1) "NFPA 99C Standard on Gas and Vacuum Systems", 2002 Edition, National Fire Protection Association, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) A copy may also be obtained by contacting the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary Public

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 15, 2009 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M. Bellis

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation defines the term "medical gas piping" in accordance with industry practice; identifies the standard which a licensed plumber shall use when installing this piping; and identifies the permitting, fee and inspection requirements for this special type of installation.

(b) The necessity of this administrative regulation: To update the existing language to comply with the current language with the medical gas code (NFPA 99C), change the permit process to enable better tracking of work, change fee to offset expenses for inspector certification, inspection time and the number of inspections.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to be used within the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: To update the existing language to comply with the current language with the medical gas code (NFPA 99C), change the permit process to enable better tracking of work, change fee to offset expenses for inspector certification, inspection time and the number of inspections.

(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: To update the existing language to comply with the current language with the medical gas code (NFPA 99C), change the permit process to enable better tracking of work, change fee to offset expenses for inspector certification, inspection time and the number of inspections.

(b) The necessity of the amendment to this administrative regulation: To update the existing language to comply with the current language with the medical gas code (NFPA 99C), change the permit process to enable better tracking of work, change fee to offset expenses for inspector certification, inspection time and the number of inspections.

(c) How the amendment conforms to the content of the authorizing statutes: To update the existing language to comply with the current language with the medical gas code (NFPA 99C), change the permit process to enable better tracking of work, change fee to offset expenses for inspector certification, inspection time and the number of inspections.

(d) How the amendment will assist in the effective administration of the statutes: Will assist the department and plumbers in utilizing updated codes and offset expenses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Plumbers will follow the language within the medical gas code of NFPA 99C with the implementation of this amendment and certified inspectors will comply with NFPA 99C. The fee increase will apply to both plumbers and medical gas facilities due to a higher permit cost.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will increase the permit fees associated with both plumbers and medical gas facilities. The cost cannot be determined at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The department of Housing, Buildings and Construction and the plumbing industry will benefit from a new process which will better track the amount of work involved for inspections, the expenses for inspector certification, the time of service necessary for inspection and the number of inspections performed.

(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 implementation and enforcement of this administrative regulation: No funding is associated with the amendment.

(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 increase in permit fees will not require additional funding, but will provide relief from other revenue sources within the Plumbing Division that is being utilized to support this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulatory amendment will increase the permit fee from twenty-eight dollar base permit fee to thirty-five dollar base with a five dollar per opening charge.

(9) TIERING: Is tiering applied? Tiering would apply in that facilities with multiple openings would be charged per opening due to adding additional inspections per opening.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing, plumbers, plumbing inspectors and medical gas facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The Department of Housing, Buildings and Construction is authorized by KRS 318.130 to promulgate and amend the Kentucky State Plumbing Code.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The amendment will have an impact on expenditures and revenues within Plumbing.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulatory amendment will generate revenue for the Division of Plumbing. The revenue generated by the permit fee increase cannot be determined at this time.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The revenue generated by the permit fee increase cannot be determined.

(c) How much will it cost to administer this program for the first year? There will be no additional cost as this administrative regulation will generate revenue.

(d) How much will it cost to administer this program for subsequent years? There will also be no additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Permit fee will only offset the use of other sources being used that is not related to medical gas permitting.

Expenditures (+/-): No change in expenditures.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(Amendment)

902 KAR 55:110. Monitoring system for prescription controlled substances.

RELATES TO. KRS 218A 010(9), 218A.202, 218A.240

STATUTORY AUTHORITY: KRS 194A 050, 218A 202(1), 218A.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202(1) directs the Cabinet for Health and Family Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances that are dispensed in the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained authorization to operate from the Kentucky Board of Pharmacy. KRS 218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A. The purpose of this administrative regulation is to establish criteria for reporting prescription data, providing reports to authorized persons, and a waiver for a dispenser who does not have an automated recordkeeping system.

Section 1. Definitions. (1) "Branch" means the Drug Enforcement and Professional Practices Branch in the Division of Audits and Investigations [~~Fraud, Waste and Abuse, Identification and Prevention~~], Office of [~~the~~] Inspector General, Cabinet for Health and Family Services.

(2) "Cabinet personnel" means an individual who:

(a)1. Is directly employed by the Cabinet for Health and Family Services; or

2. Is employed by an agent or contractor of the cabinet;

(b) Has undergone KASPER training; and

(c) Has been approved to use the KASPER system.

(3) "Dispenser" is defined by KRS 218A.010(9).

(4) "KASPER" means Kentucky All-Schedule Prescription Electronic Reporting System.

(5) "Patient identifier" means a patient's:

(a) Full name;

(b) Address, including zip code;

(c) Date of birth; and

(d) Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(6) "KASPER Reporting Form" means a form that:

(a) Is in the format of the "KASPER Reporting Form" incorporated by reference in Section 7 of this administrative regulation; and

(b) Contains the information specified by Section 2(2) of this administrative regulation.

(7) "Report" means a compilation of data concerning a patient, dispenser, practitioner, or controlled substance.

Section 2. Data Reporting. (1) A dispenser shall report all dispensed Schedule II, III, IV, or V controlled substances, except during the circumstances specified in KRS 218A.202(3)(a) and (b).

(2) A dispenser of a Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

(a) Patient identifier;

(b) National drug code of the drug dispensed;

(c) Metric quantity of drug dispensed,

(d) Date of dispensing;

(e) Estimated day's supply dispensed;

(f) Drug Enforcement Administration registration number of the prescriber;

(g) Serial number assigned by the dispenser; and

(h) The Drug Enforcement Administration registration number of the dispenser.

(3) The data identified in subsection (2) of this section shall be transmitted within seven (7) [~~eight (8)~~] days of the date of dispensing unless the cabinet grants an extension.

(4)(a) An extension may be granted if.

1. The dispenser suffers a mechanical or electronic failure; or

2. The dispenser cannot meet the deadline established by subsection (3) of this section because of reasons beyond his or her control.

(b) A dispenser shall apply to the branch in writing for an extension listed in paragraph (a) of this subsection within twenty-four (24) hours of discovery of the circumstances necessitating the request or on the next date state offices are open for business, following the discovery. An application for an extension shall state the justification for the extension and the period of time for which the extension is necessary.

(5) An extension shall be granted to a dispenser if the cabinet or its agent is unable to receive electronic reports transmitted by the dispenser.

(6) Except as provided in subsection (9) of this section, the data shall be transmitted by:

(a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent,

(b) Double sided, high density micro floppy disk;

(c) One-half (1/2) inch nine (9) track 1600 or 6250 BPI magnetic tape;

(d) Secure File Transfer Protocol;

(e) https protocol;

(f) CD/DVD, or

(g) Secure Virtual Private Network connection.

(7) The data shall be transmitted in the format established by the "ASAP Telecommunications Format for Controlled Sub-

stances", American Society for Automation in Pharmacy, May 1995, or a comparable format approved by the branch.

(8) A dispenser who does not have an automated recordkeeping system capable of producing an electronic report in the format established by "ASAP Telecommunications Format for Controlled Substances", shall be granted a waiver from the electronic reporting requirement if the dispenser:

(a) Makes a written request to the branch within twenty-four (24) hours of discovery and of the circumstances necessitating the request, or on the next date that state offices are open for business following the discovery; and

(b) Agrees in writing to immediately begin reporting the data by submitting a completed "KASPER Reporting Form" or comparable document approved in writing by the branch.

Section 3. Compliance. A dispenser may presume that the patient identification information established in Section 5 of this administrative regulation and provided by the patient or the patient's agent is correct.

Section 4. Request for Report. (1) A written or electronic request shall be filed with the cabinet prior to the release of a report, except for a subpoena issued by a grand jury or an appropriate court order issued by a court of competent jurisdiction.

(2) A request for a KASPER report shall be made electronically at "http://chfs.ky.gov/oig/kasper".

(3) A request for a KASPER report shall be made by written application on one (1) of the following forms:

(a) For law enforcement, on the "Request for Law Enforcement KASPER Report", Form DCB-15L;

(b) For judiciary, on the "Request for KASPER Report (Court)", Form DCB-15J; or

(c) For pharmacy, on the "Request for KASPER Report", Form DCB-15P.

Section 5. Patient Identification Number. (1) A patient or the person obtaining the controlled substance on behalf of the patient shall disclose to the dispenser the patient's Social Security number for purposes of the dispenser's mandatory reporting to KASPER.

(2) If a patient is an adult who does not have a Social Security number, the patient's driver's license number shall be disclosed.

(3) If a patient is an adult who has not been assigned a Social Security number or a driver's license number, the number 000-00-0000 shall be used.

(4) If a patient is a child who does not have a Social Security number or a driver's license number, the Social Security number, driver's license number, or the number "000-00-0000", as applicable, of the parent or guardian shall be used.

(5) If a patient is an animal, the owner's Social Security number, driver's license number, or the number "000-00-0000", as applicable, shall be used

Section 6. KASPER Data and Trend Reports. Cabinet personnel shall be authorized access to the data obtained from the KASPER system and trend reports in accordance with KRS 218A.240(7)(a).

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ASAP Telecommunications Format for Controlled Substances", American Society for Automation in Pharmacy, May, 1995;

(b) "KASPER Reporting Form", July 2008;

(c) "Request for Law Enforcement KASPER Report", Form DCB-15L, 5/06;

(d) "Request for KASPER Report (Court)", Form DCB-15J, 5/06, and

(e) "Request for KASPER Report", Form DCB-15P, 5/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Drug Enforcement and Professional Practices Branch, Office of the Inspector General, Cabinet for Health and Family Services, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. and may be viewed online at http://chfs.ky.gov/oig/KASPER.htm.

SADIQA N. REYNOLDS, ESQ, Inspector General
JANIE MILLER, Secretary

APPROVED BY AGENCY: April 13, 2009

FILED WITH LRC: April 14, 2009 at 3 p.m.

A public hearing on this administrative regulation shall, if requested, be held on May 21, 2009 at 9 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2009 five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, Phone: 502-564-7905, Fax: 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sadiqa N. Reynolds or Stephanie Brammer-Barnes, 502-564-2888

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Kentucky All-Schedule Prescription Electronic Reporting (KASPER) system, which requires all dispensers of Schedule II - V controlled substances to report to the Cabinet for Health and Family Services each medication dispensed, including the date, time, and person to whom the medication was dispensed. This administrative regulation implements the Hal Rodgers Prescription Drug Monitoring Program, which was established in 2001 with a $34 million federal appropriation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the KASPER Program, and to qualify for federal funds under the Hal Rodgers Grant awarded by the U.S. Bureau of Justice Assistance

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.202 by establishing the KASPER system for monitoring Schedules II - V controlled substances dispensed in Kentucky. This administrative regulation is consistent with the policy mandate of KRS 218A.202, and assists in the identification of unauthorized use and dispensation of controlled substances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing the KASPER system and sets forth the mandatory reporting requirements for dispensers of controlled substances.

(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 will require dispensers to transmit data to the Cabinet no later than seven (7) days after dispensing a Schedule II, III, IV, or V controlled substance. Currently, this administrative regulation requires dispensers to transmit data to the Cabinet no later than eight (8) days after dispensing a Schedule II - V controlled substance.

(b) The necessity of the amendment to this administrative regulation: This amendment will assure consistency with the one (1) week reporting guideline established by the National All Schedules Prescription Electronic Reporting Act of 2005 (NASPER).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by assuring consistency with the one (1) week federal reporting guideline established by NASPER at 42 U.S.C.

280g-3(d)(1). NASPER received a $2 million appropriation in a Federal Omnibus Spending bill signed by President Obama on March 11, 2009 NASPER establishes a Department of Health and Human Services Act formula grant program for states to establish, implement, or improve a prescription monitoring program (PMP). To be eligible, states must have enacted laws or regulations to permit implementation of a PMP and the imposition of appropriate penalties for the unauthorized use and disclosure of PMP information. This Fiscal Year 2009 appropriation must be obligated by September 30, and must follow a Federal Register notice to solicit comments on minimum standards. To meet these deadlines, it is conceivable that States would need to be in a position to submit grant applications no later than early to mid-July. This regulatory amendment will make Kentucky's PMP requirements consistent with the NASPER guideline established in 42 U.S.C. 280g-3(d)(1), thereby enhancing the Cabinet's ability to potentially secure funding from NASPER after submission of a grant application which the cabinet anticipates submitting in July 2009. Any funding the cabinet receives from NASPER would be used to make improvements to the KASPER system.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by assuring consistency with the one (1) week federal reporting guideline established by 42 U.S C. 280g-3(d)(1)

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts pharmacists and other practitioners in Kentucky who dispense Schedule II - V controlled substances. Approximately 1,300 pharmacies and 225 dispensing physicians and veterinarians report to the KASPER system.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. This amendment will require dispensers to transmit data to the Cabinet no later than seven (7) days after dispensing a Schedule II, III, IV, or V controlled substance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred in order to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this amendment would assure consistency with the one (1) week federal reporting guideline established by 42 U.S.C. 280g-3(d)(1), thereby enhancing the cabinet's ability to potentially secure funding from NASPER after submission of a grant application which the cabinet anticipates submitting in July 2009.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs are necessary to implement this amendment.

(b) On a continuing basis: No additional costs are necessary to implement this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and federal grant money from the Hal Rodgers Prescription Drug Monitoring Program

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amended administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This amended administrative regulation does not establish or increase any fees.

(9) TIERING Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts pharmacists and dispensing physicians and veterinarians in Kentucky who dispense Schedule II - V controlled substances.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. The state laws that authorize promulgation of this administrative regulation are KRS 218A 202, 218A.240, and 218A.250. Additionally, this regulatory amendment will make Kentucky's prescription monitoring program (PMP) requirements consistent with the NASPER guidelines established in 42 U.S.C. 280g-3, thereby enhancing the Cabinet's ability to potentially secure funding from NASPER after submission of a grant application which the Cabinet anticipates submitting in July 2009. Any funding the cabinet receives from NASPER would be used to make improvements to the KASPER system.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenue generated for state or local government for the first year that this administrative regulation is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenue generated for state or local government during subsequent years after this administrative regulation becomes effective.

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate The National All Schedules Prescription Electronic Reporting Act of 2005 (NASPER), 42 U.S.C. 208g-3, establishes a grant program for states to create prescription drug monitoring databases and enhance existing ones, similar to the Harold Rogers Prescription Monitoring grant program from which Kentucky receives funding, along with state general funds, to support the KASPER system.

The Harold Rogers grant program, housed in the Department of Justice, allows states to establish their own requirements with regard to Schedules monitored, information sharing, and accessibility/availability to the program data. Harold Rogers encourages the sharing of information and prescription data among states. Harold Rogers encourages the submission of data for prescriptions in Schedules II, III, IV & V. Eligibility for Harold Rogers grant funds has a very simple requirement. States applying for grants must have in place an enabling statute or regulation *"that requires submission of controlled substance prescription data to a centralized database administered by an authorized state agency "*

NASPER, housed within the Department of Health and Human Services (HHS), requires states to meet requirements in order to

receive grant funding. NASPER requires states to collect data for prescriptions in Schedules II, III, and IV. Additionally, NASPER requires states to be capable of sharing information and prescription data among states.

Although Kentucky does not currently receive funding from NASPER, this regulatory amendment will make Kentucky's prescription monitoring program requirements consistent with the NASPER guidelines established in 42 U S C. 280g-3, thereby enhancing the Cabinet's ability to potentially secure funding from NASPER after submission of a grant application which the Cabinet anticipates submitting in July 2009. Any funding the Cabinet receives from NASPER would be used to make improvements to the KASPER system.

2. State compliance standards. This administrative regulation complies with KRS 218A.202, which directs the Cabinet for Health and Family Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances that are dispensed in the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained authorization to operate from the Kentucky Board of Pharmacy. KRS 218A.250 requires the cabinet to promulgate administrative regulations pursuant to KRS Chapter 13A for carrying out the provisions of KRS Chapter 218A.

3. Minimum or uniform standards contained in the federal mandate. The NASPER guideline established in 42 U.S.C. 280g-3(d)(1) provides that "The State shall require dispensers to report to such State each dispensing in the State of a controlled substance to an ultimate user not later than one (1) week after the date of such dispensing." Therefore this regulatory amendment shortens the reporting period from eight (8) to seven (7) days, making Kentucky's prescription monitoring program requirements consistent with the one (1) week reporting guideline established in 42 U.S.C. 280g-3(d)(1).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the 42 U.S.C. 280g-3.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards or responsibilities are imposed.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management
(Amendment)

908 KAR 3:050. Per diem rates.

RELATES TO: KRS 210.710, 210.720, 210.730

STATUTORY AUTHORITY: KRS 194A.050(1), 210 720(2), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) requires the Secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving those services. KRS 210.750 authorizes the secretary to promulgate administrative regulations to implement KRS 210 700 to 210.760, the Patient Liability Act of 1978. This administrative regulation establishes the patient cost per day for board, maintenance and treatment at facilities operated by the cabinet.

Section 1. Facility Rates. (1) Facilities operated by the cabinet shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (2) of this section that is provided.

(a) The per diem rate through June 30, 2009,[~~the effective date of this administrative regulation~~] for room and board for each facility shall be as follows:

Facility	Rate
Central State Hospital	$535
Central State - ICF/MR	$790
Western State Hospital	$455
Western State Nursing Facility	$245
Outwood ICF/MR	$290
Oakwood Community Center	$655
Hazelwood Center	$645
Glasgow State Nursing Facility	$290
Del Maria	$645
Meadows	$635
Windsong	$670
Eastern State Hospital	$440
Volta House	$140

(b) Effective July 1, 2009, the per diem[~~the effective date of this administrative regulation the per diem rate for room and board for each facility~~] shall be as follows:

Facility	Rate
Central State Hospital	$660[~~595~~]
Central State - ICF/MR	$1060[~~1,015~~]
Western State Hospital	$610[~~480~~]
Western State Nursing Facility	$295[~~265~~]
Outwood ICF/MR	$365[~~310~~]
Oakwood Community Center	$865[~~860~~]
Hazelwood Center	$660[~~700~~]
Glasgow State Nursing Facility	$360[~~355~~]
Del Maria	$665[~~645~~]
Meadows	$730[~~635~~]
Windsong	$610[~~670~~]
Eastern State Hospital	$410
Volta House	$140

(2) A separate charge shall be imposed if the following treatment services are provided at a Department for Mental Health and Mental Retardation Services facility listed in subsection (1) of this section.

(a) Physicians services,
(b) EEG;
(c) EKG;
(d) Occupational therapy;
(e) Physical therapy;
(f) X-ray;
(g) Laboratory;
(h) Speech therapy;
(i) Hearing therapy;
(j) Psychology;
(k) Pharmacy;
(l) Respiratory therapy;
(m) Anesthesia;
(n) Electroshock therapy;
(o) Physician assistant; or
(p) Advanced registered nurse practitioner.

Section 2. Board, Maintenance and Treatment Charges. Cost per day for board, maintenance and treatment charges shall be established using the last available cost report increased for inflation. Current rates shall be posted at each facility

ERIC FRIEDLANDER, Acting Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: April 8, 2009

FILED WITH LRC: April 10, 2009 at 11 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2009, at 9 a m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individ-

uals interested in attending this hearing shall notify this agency in writing by May 14, 2009, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation until the close of business June 1, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Glenn Bryant or Ijeoma Eneje (502) 564-4860

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires the Secretary of the Cabinet for Health and Family Services to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet at frequent intervals which shall be the uniform charge for persons receiving those services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assure that cabinet facilities maintain the financial ability to care for persons with mental health and mental retardation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.720(2). This administrative regulation requires the cabinet to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation at frequent intervals establishes the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet. It enables the cabinet to recoup the actual costs of providing room, board and treatment to persons with mental illness and mental retardation, and to establish a uniform charge rate for each facility.

(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 being amended to establish the revised patient cost per day for facilities operated by the cabinet.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to assure that the per diem charge covers the actual costs incurred in the rendition of client care.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.720(2) The amendment requires the cabinet to establish the patient cost per day for board, maintenance and treatment for a facility operated by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720(1). The amendment requires that every patient admitted to a facility operated by the cabinet, except for prisoners transferred in accordance with KRS 202A.201 shall be charged for board, maintenance, and treatment. This administrative regulation establishes a rate for room, board, and treatment at the facilities operated by the Cabinet for Health and Family Services. This charge rate reflects the actual cost of providing these services to clients.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are sixteen (16) state operated facilities affected by this administrative regulation. This amendment will primarily affect patients admitted to facilities operated by the cabinet who have the resources to pay for their care, or who have third party payers other than Medicaid or Medicare.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This administrative regulation will assure that state operated facilities have sufficient revenues to provide the same level of care to indigent citizens as at present.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each facility will be required to change the charge rates in their billing system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This change will ensure that the facilities are reimbursed appropriately for services and treatments they rendered.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will not be an initial cost to implement this administrative regulation.

(b) On a continuing basis: There will not be an ongoing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds. The facilities operated by the cabinet will be required to change the charge rates on their computerized billing systems.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation adjusts the charge rates as established by this amendment. These changes are needed to continue the provision of inpatient care at current levels. No increase in funding will be needed because functions of billing and financial record keeping for state operated facilities are currently in place.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation establishes charges for room, board, and treatment at state operated facilities that are currently below cost. Per diem rates are set utilizing the facilities most recently completed cost reports.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because all facility rates are set based on actual cost.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the sixteen (16) state operated facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.720(2)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will ensure appropriate charges for services to clients receiving treatment in any of the 16 state operated facilities.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue for either the state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate any revenue.

(c) How much will it cost to administer this program for the first year? There will be any cost associated to administrating this regulation.

(d) How much will it cost to administer this program for subsequent years? There will not be any cost related to administrating this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): This administrative regulation does not generate any revenue.

Expenditures (+/-): This administrative regulation sets per diem rate for facilities operated by the cabinet.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Mental Health and Mental Retardation Services
Division of Administration and Financial Management
(Amendment)

908 KAR 3:060. "Means test" for determining patient liability.

RELATES TO: KRS 210.710, 210.720, and 210.730

STATUTORY AUTHORITY: KRS 194A.050, 210.710(4), 210.720(3), 210.750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.710(4) and 210.720(3) require the Secretary to adopt a "Means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the Cabinet for Health and Family Services, for the mentally ill or mentally retarded. This administrative regulation establishes the "Means test" for making that determination.

Section 1. Definitions. (1) "Allowed deduction" means an amount disregarded or deducted from income and assets for the purpose of determining the ability to pay for services rendered by a facility.

(2) "Available assets" means resources of the patient or person responsible for the patient in accordance with KRS 210.720(3), less the applicable protections specified in Section 2(7) of this administrative regulation.

(3) "Deductible" means an amount that a patient or person responsible for the patient is expected to pay toward their care by a third-party payor such as Medicare or a private insurance company.

(4) "Facility" is defined in KRS 210.710(2).

(5) "Income" means funds received by the patient or person responsible for the patient and includes the following:

(a) Salaries;

(b) Wages;

(c) Self-employed gross revenues, less operating expenses;

(d) Benefit payments, except for Supplemental Security Income payments;

(e) Social Security payments;

(f) Rents;

(g) Royalties;

(h) Pensions;

(i) Retirement payments;

(j) Veteran's Administration payments;

(k) Black lung benefits;

(l) Railroad retirement benefits;

(m) Gifts;

(n) Settlements;

(o) Trust receipts;

(p) Alimony, but does not include child support payments;

(q) Interest income; and

(r) Income from investments.

(6) "Patient" means a person admitted to a facility.

(7) "Person responsible for the patient" is defined in KRS 210.710(5).

(8) "Personal Needs Allowance" means an amount of resources deducted from income for the patient's personal needs, including clothing and other miscellaneous items required by the patient.

(9) "Poverty Guidelines" means the latest federal poverty measurement guidelines issued by the United States Department of Health and Human Services and published annually in the Federal Register, under the authority of 42 U.S.C. 9902(2).

Section 2. Determination of the Ability to Pay for Services Rendered at Facilities. (1) The facility shall apply the means test to each patient who is admitted to the facility for treatment.

(2) The means test shall include a determination of the responsible party or parties to pay for the patient's care, which shall be documented using the "PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD" form. This form shall be explained to the patient or person responsible for the patient and signed by all parties. If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form along with the date the form was discussed. Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(3) The amount a patient or person responsible for the patient is required to pay for services shall be the lesser of:

(a) The cost per patient day in accordance with 908 KAR 3.050, less any amount paid by Medicare, Medicaid, and other third-party payment sources; or

(b) The amount the patient is deemed able to pay in accordance with this administrative regulation.

(4) The facility shall determine the financial resources available to the patient or person responsible for the patient including:

(a) Insurance and third-party payors;

(b) Income received or expected to be received during the period of hospitalization; and

(c) Available assets.

(5) The following shall be allowed deductions from income:

(a) Federal income taxes;

(b) State income taxes;

(c) Social security taxes;

(d) Normal retirement contributions;

(e) Unpaid medical and dental bills;

(f) Health insurance premiums;

(g) Medicare Part B insurance premiums;

(h) Long-Term Care insurance premiums;

(i) A personal needs allowance of forty (40) dollars per month;

(j) Student loan payments;

(k) Bed-hold reservation costs at another facility for up to fourteen (14) days as long as the patient's stay is expected to be shorter than the reservation period;

(l) Child support payments;

(m) Life insurance premiums if the patient's estate or a funeral home is the named beneficiary on the policy; and

(n) A basic maintenance allowance, derived from the Poverty Guidelines, as contained in the Basic Maintenance Allowance Table of Section 3(7) of this administrative regulation for the size of the patient's family if the following conditions are met:

1. The patient was maintaining a residence immediately prior to admission;

2. The residence will continue to be maintained during the period of hospitalization and resources of the patient are needed for this effort;

3. Facility staff expects the patient's hospital stay to be three (3) months or less in duration; and

4. Dependents used in the calculation of the basic maintenance allowance shall include a legally-recognized spouse and each individual less than eighteen (18) years of age and in the patient's care.

(6) An estimated income tax related deduction of twenty-five (25) percent of total income shall be allowed in lieu of the actual wage taxes contained in subsection (5) of this section. A patient or person responsible for the patient may request that actual tax amounts be used instead of the estimated deduction if they can substantiate the actual tax amounts.

(7) The following shall be excluded from the calculation of available assets:

(a) Prepaid burial plans of up to $1,500 per family member;

(b) Automobiles;

(c) Housing structures;

(d) Land;

(e) Retirement accounts;

(f) Pension funds;

(g) Trust funds that cannot be accessed;

(h) The applicable amount contained in the Ability To Pay Assets Table of Section 3(7) of this administrative regulation for the size of the patient's family using the dependent counting guidelines contained in subsection (5)(n)4 of this section, and

(i) Other assets that are exempted under state law, if any.

Section 3. Calculation of the Amount the Patient or Person Responsible for the Patient is Able to Pay.

(1) The facility shall calculate the ability to pay amount utilizing either the "ABILITY TO PAY WORKSHEET" or the "DEDUCTIBLE ABILITY TO PAY WORKSHEET" as appropriate:

(a) Determine the total amount of income of the patient or person responsible for the patient;

(b) Determine the amount of allowed deductions from income in accordance with Section 2(5) of this administrative regulation;

(c) Subtract the allowed deductions from income; and

(d) The remaining available income shall be divided by 365 to obtain the average daily income of the patient or person responsible for the patient.

(2) If the patient or person responsible for the patient has available assets, the facility shall:

(a) Determine the amount of available assets in accordance with Section 2(7) of this administrative regulation; and

(b) Include available assets that remain after the deduction in the patient or person responsible for the patient's ability to pay amount.

(3) Payments to be made on behalf of the patient by a third-party, such as Medicare, Medicaid, or private insurance companies, shall be subtracted from the facility's per diem rate as contained in 908 KAR 3.050. Any remaining liability shall be satisfied as follows with the exception of ability to pay amounts arising from deductibles:

(a) The available income of the patient or person responsible for the patient shall first be applied to the patient's liability for services;

(b) Any liability that remains after application of the average available income shall be satisfied by available assets; and

(c) The applicable average income per day and available asset amount per day shall be combined to determine the ability to pay amount. The ability to pay amount shall be charged for each day the patient is in the facility.

(4) Ability to pay liabilities arising from deductibles shall first be applied to available assets of the patient or person responsible for the patient with any remaining liability being satisfied with available income.

(5) If the Department for Medicaid Services performs an income assessment for a Medicaid patient residing in a nursing facility, intermediate care facility for the mentally retarded, or psychiatric hospital in accordance with 907 KAR 1:655, that Medicaid income assessment shall be relied upon in lieu of the ability to pay provisions established in this administrative regulation.

(6) After the ability to pay is determined for the patient or person responsible for the patient, a "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form shall be completed. This form shall be explained to the patient or person responsible for the patient and signed by all parties. If the patient or person responsible for the patient refuses to sign, this refusal shall be noted on the form including the date the form was discussed. Refusal to sign the form shall not absolve the liability of the patient or person responsible for the patient to pay for services rendered.

(7) The patient liability shall be calculated based on the United States Department of Health and Human Services poverty threshold guidelines established in this subsection:

(a) The poverty guidelines effective July 1, 2008[~~2007~~] through June 30, 2009[~~2008~~] shall be as follows:

TABLE I. BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	$10,400[~~10,210~~]
2	$14,000[~~13,690~~]
3	$17,600[~~17,170~~]
4	$21,220[~~20,650~~]
5	$24,800[~~24,130~~]
6	$28,400[~~27,610~~]
7	$32,000[~~31,090~~]
8	$35,600[~~34,570~~]

*For each additional dependent, add $3,600[~~3,480~~] dollars.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	$2,000
2	$4,000
3	$4,050
4	$4,100

*For each additional dependent, add fifty (50) dollars

(b) The poverty guidelines effective July 1, 2008 shall be as follows:

TABLE I BASIC MAINTENANCE ALLOWANCE TABLE	
Size of Family	Allowed deduction from income*
1	$10,830[~~10,400~~]
2	$14,570[~~14,000~~]
3	$18,310[~~17,600~~]
4	$22,050[~~21,200~~]
5	$25,790[~~24,800~~]
6	$29,530[~~28,400~~]
7	$33,270[~~32,000~~]
8	$37,010[~~35,600~~]

*For each additional dependent, add $3,740[~~3,600~~] dollars.

TABLE II. ABILITY TO PAY ASSETS TABLE	
Size of Family	Allowed Deduction from Assets*
1	$2,000
2	$4,000
3	$4,050
4	$4,100

*For each additional dependent, add fifty (50) dollars

Section 4. Revisions to Ability to Pay Amounts. (1) Facility staff shall update a patient's ability to pay amount to incorporate changes that take place subsequent to the initial determination. These changes may include:

(a) Income revisions;

(b) Asset revisions including exhaustion of available assets;

(c) Change in allowed deductions;

(d) Change in a dependent of the patient or person responsible for the patient; or

(e) Change regarding the status of the person responsible for the patient.

(2) Upon a change to the ability to pay information, a revised "ABILITY TO PAY WORKSHEET" or "DEDUCTIBLE ABILITY TO PAY WORKSHEET" shall be prepared along with a revised "PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD" form and a revised "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT" form. The revised forms shall be presented to the patient or person responsible for the patient in the same manner as the original forms.

Section 5. Failure to Provide Financial Information or to Assign Benefits. (1) If the patient or person responsible for the patient fails to or will not provide the information necessary to calculate the ability to pay amount, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

(2) If the patient or person responsible for the patient fails to sign the assignment provision contained in the "PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGN-

MENT" form, the maximum charge provided in Section 2(3)(a) of this administrative regulation shall be assessed.

Section 6. Payment Hardship, Appeal and Waiver Procedures. (1) Payment hardships.

(a) If the patient or person responsible for the patient believes that payment of the ability to pay amount results in a financial hardship, the patient or person responsible for the patient may request to make installment payments.

(b) This request shall be made in writing to the facility's patient billing supervisor and shall include documentation to support the claimed hardship.

(c) The patient billing supervisor shall review the financial hardship request and render a payment plan decision within fifteen (15) days from the receipt of the hardship request.

(2) Appeals.

(a) If the patient or person responsible for the patient is aggrieved by the facility charges or a payment plan determined in accordance with this administrative regulation, that person may appeal the determination to the facility director or the facility director's designee for informal resolution within thirty (30) days of the ability to pay amount or payment plan being calculated.

(b) The facility director or the facility director's designee shall review the appeal and issue a determination within thirty (30) days of receipt.

(c) If the patient or person responsible for the patient is dissatisfied with the informal resolution, that person may file an appeal within thirty (30) days of the facility's response to the Director of the Division of Administration and Financial Management, Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, 4th Floor, Frankfort, Kentucky 40621-0001. The director shall arrange for an administrative hearing in accordance with KRS Chapter 13B.

(d) The appeal request shall fully explain the patient's or person responsible for the patient's position and include all necessary supporting documentation.

(3) Waivers.

(a) The director of each facility may waive payment of his or her facility's charges under this administrative regulation if waiver is deemed to be in the best interest of all parties.

(b) The Director of the Division of Administration and Financial Management shall have the authority to waive payment at any facility within the department if waiver is deemed to be in the best interest of all parties.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MHMR 3:060-1 ABILITY TO PAY WORKSHEET", June 2008;

(b) "MHMR 3:060-2 DEDUCTIBLE ABILITY TO PAY WORKSHEET", June 2008;

(c) "MHMR 3.060-3 PATIENT OR RESPONSIBLE PARTY FINANCIAL AGREEMENT AND ASSIGNMENT", August 2004; and

(d) "MHMR 3 060-4 PATIENT OR RESPONSIBLE PARTY FINANCIAL RECORD", March 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, Frankfort, Kentucky 40621-0001, Monday through Friday, 8 a.m. to 4:30 p m.

ERIC FRIEDLANDER, Acting Commissioner
JANIE MILLER, Secretary

APPROVED BY AGENCY: April 9, 2009

FILED WITH LRC: April 10, 2009 at 11 a m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2009, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2009, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation until the close of business June 1, 2009. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Glenn Bryant or Ijeoma Eneje

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires the Secretary of the Cabinet for Health and Family Services to adopt a "means test" for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet for the mentally ill or mentally retarded.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary in order to establish a homogeneous methodology to determine the ability of a patient or person responsible for the patient to pay for services received at a facility operated or utilized by the cabinet for the mentally ill or mentally retarded.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 210.710 to KRS 210.760 requires the cabinet to adopt a "means test" to determine the ability to pay of a patient who receives services at a facility for the mentally ill or mentally retarded operated or utilized by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the cabinet in determining the entire financial resources available to a patient or person responsible for the patient.

(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 being amended to update the Basic Maintenance Allowances table based on the most recent version of the Federal poverty guideline allowance amounts.

(b) The amendment to this administrative regulation is necessary to: revise tables related to benefit and support limits based on Federal poverty guidelines in order to accurately determine the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet for the mentally ill or mentally retarded.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 210.710 to KRS 210.760 requires the cabinet to adopt a "means test" to determine the ability to pay of a patient who receives services at a facility for the mentally ill or mentally retarded operated or utilized by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: KRS 210.720 requires the cabinet to adopt a "means test" to determine the ability to pay of a patient. This amendment to 908 KAR 3:060 allows the Cabinet to more accurately assess the entire financial resources available to a patient or person responsible for the patient.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are sixteen (16) state operated facilities affected by this administrative regulation. This amendment will primarily affect patients admitted to facilities operated by the cabinet.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: This administrative regulation will assure that state operated facilities equitably charge patients served. Increase in poverty guidelines factor into patient's liability to their benefit in allowable deductions.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Facility staff will be required to assess the financial resources of the clients or clients' financially responsible party.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). There will be no cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation allows facilities to assess and recoup costs associated with treatment and services. No resident presented for admission shall be denied treatment due to their inability to pay

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is not an additional cost to implement and enforce 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. This administrative regulation will not generate any increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not increase fees to a patient or to the cabinet.

(9) Tiering: Is tiering applied? Tiering is not appropriate in this administrative regulation because the "Means Test" to determine ability to pay apply equally to all patients.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The sixteen (16) state operated facilities are impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210 710, 210.720

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect This administrative regulation allows facilities to asses and recoup costs associated with treatment and services

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue

(c) How much will it cost to administer this program for the first year? There is no cost to administer this administrative regulation

(d) How much will it cost to administer this program for subsequent years? There is not a cost to administer this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): This administrative regulation will not generate any revenue.

Expenditures (+/-): This administrative regulation uses the federal poverty guideline to determine a client's ability to pay for services provided.

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, APRIL 15, 2009

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Plumbing
(Amendment)

815 KAR 20:079. Repeal of 815 KAR 20:077.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS Chapter 13A, 318.130
NECESSITY, FUNCTION, AND CONFORMITY: 815 KAR 20 077 is being repealed as the product no longer exists.
Section 1. 815 KAR 20 077, Storage and installation of aluminum soil, waste vent and storm water piping and fittings, is hereby repealed.

RICHARD MOLONEY, Commissioner
ROBERT D. VANCE, Secretary Public
APPROVED BY AGENCY: April 13, 2009
FILED WITH LRC: April 15, 2009 at 10 a.m
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2009, at 9 a.m., EDT, at the Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2009 (five working days prior to the hearing) of their intent to attend If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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 June 1, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.
CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings, and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, ext. 144, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dawn M Bellis
(1) Provide a brief summary of:
(a) What this administrative regulation does This administrative regulation relates to the storage, handling and installation of aluminum soil, waste, vent and storm drain pipe and fittings, and identifies the manufacturer's specification number of the material accepted in those installations
(b) The necessity of this administrative regulation: To repeal the administrative regulation as the product is no longer available.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 directs the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code to be used within the state.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will repeal an administrative regulation that relates to a product that no longer exists
(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. It will repeal the administrative regulation that provides for a product that no longer exists.
(b) The necessity of the amendment to this administrative regulation: It will repeal, not amend, the regulation
(c) How the amendment conforms to the content of the authorizing statutes: Repeals an administrative regulation that contains a product that no longer exits.
(d) How the amendment will assist in the effective administration of the statutes· Will assist the department and plumbers in establishing the repeal of a product that no longer exists.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Housing, Buildings and Construction, plumbers, and plumbing inspectors.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment.
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no affirmative action necessary by affected parties. The administrative regulation contains a product that no longer exists.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the repeal of the regulation.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Those affected will no longer have a guideline for a product which is no longer produced or available.
(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 implementation and enforcement of this administrative regulation: No funding is associated with the amendment.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.
(9) TIERING: Is tiering applied? No tiering is applied as this amendment deletes language.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
The Department of Housing, Buildings and Construction, Division of Plumbing, plumbers and plumbing inspectors.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation Statutory authority is granted in KRS 318.130 to the Department of Housing, Buildings and Construction to promulgate and amend the Kentucky State Plumbing Code.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This repeal will have no impact on expenditures or revenues.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This repeal will not generate revenue.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulatory repeal will not generate revenue in subsequent years.
(c) How much will it cost to administer this program for the first year? There will be no additional cost as this repeals an administrative regulation.
(d) How much will it cost to administer this program for subse-

quent years? There will also be no additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of April 14, 2009

The April meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, April 14, 2009 at 10.00 a.m., in Room 149 of the Capitol Annex. Committee Staff Administrator David Nicholas called the meeting to order, the roll call was taken. After election of the House Co-chair, Representative Leslie Combs assumed the meeting The minutes of the March 9, 2009 meeting were approved.

Present were:

Members: Senators Alice Forgy-Kerr, Joey Pendleton, and Elizabeth Tori and Representatives Danny Ford, Leslie Combs, Robert Damron, and Jimmie Lee.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Emily Harkenrider, Emily Caudill, Jennifer Beeler, and Laura Napier.

Guests Sue Cain, Ron Carson, Dennis Taulbee, Council on Postsecondary Education; Beau Barnes, Ky Teachers' Retirement System; Devon Hankins, Travis Powell, Robert Ramsey, Jr, Office of Financial Management; Steve Hart, Kentucky Board of Pharmacy; Mark Brengelman, Connie Calvert, Jerald Combs, Board of Optometric Examiners; Rex Cecil, Tony Goetz, Kentucky Board of Architects; Becky Klusch, Board of Physical Therapy; Carolyn Kyler, Division of Occupations and Professions, Frances Short, Tony Watkins, Kentucky Board of Marriage and Family Therapists; Chad Halsey, Chad Miller, Clint Quarles, Gary Wheeler, Department of Agriculture, BJ Helton, Council on Postsecondary Education; Mike Dixson, Dan Walton, Labor Cabinet; Tom Dockter, Carole Jacobs, Lucretia Johnson, Pamela Knight, Dwight Lovan, Charles Lowther, Karen Mercer, Department of Workers' Claims; DJ Wasson, Department of Insurance; John Forgy, Kentucky Horse Racing Commission; Stephanie Brammer-Barnes, Office of Inspector General; Elizabeth Caywood, Marilyn Ferguson, Karen Martin, Stuart Owen, Karla Thompson, and Sharon Vinyard, Cabinet for Health and Family Services; Nancy Galvagni, Stephen Miller, Sarah S. Nicholson, Kentucky Hospital Association; Paula Pabon, Kentucky Farm Bureau Insurance Company.

The Administrative Regulation Review Subcommittee met on Monday, April 14, 2009, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

COUNCIL ON POSTSECONDARY EDUCATION: Public Educational Institutions

13 KAR 2 020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky. Dr. Sue Cain, coordinator of the Developmental Education and College Readiness Initiative, and Dennis L. Taulbee, general counsel, represented the council.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to correct statutory citations; and (2) to amend Sections 2, 3, 6, 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.

FINANCE AND ADMINISTRATION CABINET: Teachers' Retirement System: General Rules

102 KAR 1.070. Application for retirement. Beau Barnes, deputy executive secretary and general counsel, represented the system.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to clarify requirements that were previously stated in the application form; (4) to amend Sections 1 through 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to correct the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:105. 401(h) Account established under 26 U.S C. 401(h).

A motion was made and seconded to approve the following amendments: (1) to amend the title for consistency, (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (4) to amend Sections 1 through 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to correct the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:170. Minimum distribution.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 2 through 6 to comply with the drafting and format requirements of KRS Chapter 13A, and (4) to correct the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1.225. General compliance with federal tax laws.

A motion was made and seconded to approve the following amendments: (1) to amend the title for consistency; (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (4) to amend Sections 1 and 3 through 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to correct the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:230. Limitations on benefits.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to consolidate all definitions; (4) to amend Sections 1, 2, and 4 through 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to correct the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:240. Increase in compensation limit.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220, (3) to amend Sections 1 through 6 to comply with the drafting and format requirements of KRS Chapter 13A, and (4) to correct the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1 245. Rollovers and transfers of contributions to other plans

A motion was made and seconded to approve the following

amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct citations; (2) to amend Sections 1 and 2 to comply with KRS Chapter 13A, and (3) to correct the FISCAL NOTE ON STATE OR LOCAL GOVERNMENT. Without objection, and with agreement of the agency, the amendments were approved.

Office of the Secretary: Kentucky Private Activity Bond Allocation Committee

200 KAR 15 010E. Formula for allocation of private activity bonds. Travis Powell, staff attorney, and Robert Ramsey, Jr., financial analyst, represented the office.

In response to a question by Representative Damron, Mr. Ramsey stated that the purpose of this administrative regulation was to comply with the statutory requirements that changed the money allocations to sixty (60) and forty (40) percent.

GENERAL GOVERNMENT CABINET: Board of Pharmacy: Board

201 KAR 2:050. Licenses and permits; fees. Steve Hart, inspection and investigations coordinator, represented the board.

Board of Optometric Examiners: Board

201 KAR 5.120 & E. Practice of optometry outside of regular office for a charitable purpose. Connie Calvert, executive director, and Dr. Jerald Combs, board president, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (3) to amend Sections 2, 4, and 5 to comply with the formatting and drafting requirements of KRS Chapter 13A; and (4) to add Section 6 to require that eyeglasses provided shall be new and first quality. Without objection, and with agreement of the agency, the amendments were approved.

Board of Architects: Board

201 KAR 19:035. Qualifications for examinations and licensures. Mark Brengelman, assistant attorney general; Rex Cecil, executive director; and Tony Goetz, public board member, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19:040. Examinations required; general provisions.

A motion was made and seconded to approve the following amendment: to amend Section 6 to correct a minor drafting error. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 19 070. Duplicate certificates.

A motion was made and seconded to approve the following amendment. to amend Section 1 to correct a minor drafting error. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 19·085 Fees.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19 087. Continuing education.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (2) to amend Sections 3, 5, and 7 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy: Board

201 KAR 22:070. Requirements for foreign-educated physical therapists. Becky Klusch, executive director, and Mark Brengelman, assistant attorney general, represented the board.

Board of Licensure for Marriage and Family Therapists: Board

201 KAR 32:020. Equivalent course of study. Carolyn Kyler, board administrator; Frances Short, director, Division of Occupations and Professions; and Tony Watkins, board chair, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to comply with format standards; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to: (a) correct a statutory citation, and (b) clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220, and (3) to amend Sections 1 through 6 to: (a) make technical corrections; and (b) comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 32.035. Supervision of marriage and family therapist associates.

A motion was made and seconded to approve the following amendments: (1) to amend the Title and the RELATES TO and STATUTORY AUTHORITY paragraphs to comply with format standards; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to make a technical correction; (3) to amend Section 1 to add a definition and correct a date; (4) amends Sections 1 through 4 and 6 through 8 to comply with the drafting and format requirements of KRS Chapter 13A; (5) to add a SUMMARY OF MATERIAL INCORPORATED BY REFERENCE; and (6) to add the Diagnostic and Statistical Manual of Mental Disorders to the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved

201 KAR 32.042. Repeal of 201 KAR 32 042.

201 KAR 32.070. Complaint procedure.

A motion was made and seconded to approve the following amendments (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 through 4, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to revise the SUMMARY OF MATERIAL INCORPORATED BY REFERENCE; and (5) to amend the Complaint Form and Instructions incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Department of Agriculture: Division of Regulation and Inspection: Amusement Rides

302 KAR 16:010. Business identification number required. Chad Halsey, branch manager, and Clint Quarles, staff attorney, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete a term that is not used in the administrative regulation, (2) to amend Section 3 to delete a provision requiring a form that is no longer used; and (3) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16.020. Inspection and operation of amusement rides and amusement attractions.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 6, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16.030. Determination of administrative or safety violations which cannot be corrected immediately; section stop

order.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16 040. Correction of safety violations and right to reinspection.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16.070. Reports of injuries involving amusement rides and amusement attractions.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to delete language that repeated provisions of KRS 247.233; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16:080. Qualifications and inspection criteria for bungee-jumping or similar apparatus permit.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to move requirements out of the definitions section; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3 through 12 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16 091. Rides and attractions not included in the definition of amusement ride or attraction.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

302 KAR 16.101. Operate amusement ride or device defined.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16:111 & E. Violations, revocations and suspensions of business identification number.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 for clarity and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16.121. Inflatable rides or attractions.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 3 through 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16:131. Maintenance and repair of amusement ride or attractions.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 16:140. Amusement rides or attractions not requiring an operator.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and 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.

COUNCIL ON POSTSECONDARY EDUCATION: Adult Education and Literacy

785 KAR 1:010. GED Testing Program. Dr. B.J. Helton, senior associate, and Dennis L. Taulbee, general counsel, represented the council.

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 NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 3 and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved

LABOR CABINET: Department of Workplace Standards: Division of Employment Standards; Apprenticeship Programs: Labor Standards; Wages and Hours

803 KAR 1:010. Registration of apprenticeship programs. Mike Dixon, commissioner, and Dan Walton, executive assistant, represented the division.

A motion was made and seconded to approve the following amendments (1) to amend Section 1 to cite to statutory definitions and place the terms in alphabetical order; (2) to amend Sections 3 and 4 to delete requirements that are provided by statute; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 1:120. Prevailing wage posting requirements.

A motion was made and seconded to approve the following amendments. to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Workers' Claims: Department

803 KAR 25 091. Workers' compensation hospital fee schedule. Tom Dockter, staff attorney, and Dwight Lovan, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 9 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to create a new Section 10 to incorporate by reference the required forms; and (3) to amend Sections 3 and 4 to specify that the commissioner's determination shall be made upon the written documents submitted by the requesting hospital. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts

806 KAR 17.083. Kentucky long-term care partnership insurance program. D.J Wasson, staff assistant, and Sharon Clark, commissioner, represented the department.

Kentucky Horse Racing Commission: Thoroughbred Racing

810 KAR 1:012. Horses. John Forgy, general counsel, represented the commission.

A motion was made and seconded to approve the following amendments (1) to amend Section 10 to use the term "riding crop" instead of "whip" in conformity with the remainder of this administrative regulation and industry usage; (2) to amend Section 10(10)(a) to specify the standards used for the inspection and approval of riding crops; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

810 KAR 1:016. Running of the race.

In response to a question by Co-Chair Tori, Mr. Forgy stated that this administrative regulation established requirements to determine excessive use of riding crops based on judgment calls of the stewards during races.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to include EO 2008-668, which established the commission and transferred all authority, functions, and responsibilities of the Kentucky Horse Racing Authority to the commission; and (2) to amend Sections 5 and 7 through 17 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Harness Racing

811 KAR 1:215. Kentucky Standardbred Development Fund.

A motion was made and seconded to approve the following amendment: to amend Section 24(3) to change the deadline for disbursement of funds from August 15 to December 15 Without objection, and with agreement of the agency, the amendment was approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of the Inspector General: Health Services and Facilities

902 KAR 20 106 & E. Operation and services; ambulatory surgical center. Stephanie Brammer-Barnes, regulation coordinator, represented the office.

Representative Lee commended the cabinet for this administrative regulation's topical approach to explaining the twenty-four (24) hour limitations.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend Sections 1, 2, 5, 6, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Division of Community Alternatives: Medicaid Services

907 KAR 1:170 & E. Reimbursement for home and community based waiver services. Stuart Owen, regulation coordinator, represented the department.

Department for Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2.015 & E. Supplemental programs for persons who were aged, blind, or have a disability. Elizabeth Caywood, internal policy analyst, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 6, 7, and 12 to update internal references and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Energy Assistance Program/Weatherization

921 KAR 4:116 & E. Low income home energy assistance program or "LIHEAP".

A motion was made and seconded to approve the following amendments: 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

The following administrative regulations were deferred to the May 12, 2009, meeting of the Subcommittee:

PERSONNEL CABINET: Classified

101 KAR 2 066 & E. Certification and selection of eligibles for appointment.

GENERAL GOVERNMENT CABINET: Board of Examiners and Registration of Landscape Architects: Board

201 KAR 10.050. Fees.

Board of Veterinary Examiners: Board

201 KAR 16:015. Fees.

Board of Licensure for Marriage and Family Therapists: Board

201 KAR 32 025. Marriage and family therapists associate. Carolyn Kyler, board administrator; Frances Short, director, Division of Occupations and Professions; and Tony Watkins, board chair, represented the board.

In response to questions by Representative Damron, Mr. Watkins stated that the board did not expect to be solvent over the next three (3) years and thus needed to raise fees. He stated that approximately $12,200 had been swept from the fund by the General Assembly and that these were the first proactive, proposed fee increases since the inception of the board. He further stated that the licensed members understood the need for the fee increases and that, if funds were swept again, the board did not intend to request a redress of grievances with the subcommittee.

In response to questions by Representative Lee, Mr. Watkins stated that future projected expenses necessitated the proposed fee increases and that licensed members were notified through the association's newsletter and at the state association meeting. He stated that approximately 500 persons would be impacted by the fee increases but that he could not guarantee that ninety (90) percent of members were aware of the proposal.

Representative Lee stated that each member needed to be notified of the proposed fee increases by direct letter from the board.

In response to questions by Representative Ford, Mr. Watkins stated that it was not possible to predict whether or not future board funds would be swept by the General Assembly. He stated that approximately 330 out of 400 licensed members were present at the state association meeting when the proposed fee increases were presented.

In response to questions by Co-Chair Tori, Mr. Watkins stated that the board had not proposed fee increases since the inception of the board in 1995 and that the board had projected carryover funds through 2011. He stated that the average carryover since 2007 was between $85,000 and a negative balance.

A motion was made and seconded to approve the following amendments: (1) to amend the Title and STATUTORY AUTHORITY paragraph to comply with format standards; (2) to amend Sections 1 through 6 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to revise the SUMMARY OF MATERIAL INCORPORATED BY REFERENCE; and (4) to amend an application form incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

In response to questions by Co-Chair Tori and Representative Ford, Mr. Watkins agreed to defer consideration of this administrative regulation and 201 KAR 32 030, both as amended, to the May 12 meeting of the Subcommittee. Without objection, and with agreement of the Subcommittee and agency, this administrative regulation was deferred.

201 KAR 32:030. Fees.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220, (2) to amend Sections 1 through 6 and 8 to comply with the drafting and format requirements of KRS Chapter 13A; (3) to revise the SUMMARY OF MATERIAL INCORPORATED BY REFERENCE; and (4) to amend material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

In response to questions by Co-Chair Tori and Representative Ford, Mr. Watkins agreed to defer consideration of this administrative regulation and 201 KAR 32:025, both as amended, to the May 12 meeting of the Subcommittee. Without objection, and with agreement of the Subcommittee and agency, this administrative regulation was deferred.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality Standards

401 KAR 10.026. Designation of uses of surface waters.

401 KAR 10:029. General provisions.

401 KAR 10:030. Antidegradation policy implementation methodology.

401 KAR 10 031. Surface water standards.

Division of Waste Management: Methamphetamines
401 KAR 101:001. Definitions for 401 KAR Chapter 101.
401 KAR 101:010. Contractor certification.
401 KAR 101:020. Financial requirements.
401 KAR 101:030. Tiered response system
401 KAR 101:040. Cleanup and sampling requirements.

EDUCATION CABINET: Kentucky Board of Education: Department of Education: School Administration and Finance
702 KAR 3 090 Depository bond, penal sum.

Facilities Management
702 KAR 4 160 Capital Construction process.

Food Service Programs
702 KAR 6 010. Local responsibilities
702 KAR 6.020. District school nutrition director.
702 KAR 6:031. Repeal of 702 KAR 6.030.
702 KAR 6:040. Personnel; policies and procedures.
702 KAR 6.045. Personnel, school nutrition employee qualifications.
702 KAR 6 075. Reports and funds
702 KAR 6 090. Minimum nutritional standards for foods and beverages available on public school campuses during the school day; required nutrition and physical activity reports.

School Terms, Attendance and Operation
702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

PUBLIC PROTECTION CABINET: Department of Insurance: Health Insurance Contracts
806 KAR 17.480. Uniform evaluation and reevaluation of providers.

Kentucky Horse Racing Commission: Thoroughbred Racing
810 KAR 1:025 & E. Licensing thoroughbred racing.

Harness Racing
811 KAR 1:070 & E. Licensing standardbred racing.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Medicaid Services: Division of Community Alternatives: Medicaid Services
907 KAR 1:585. Estate recovery.
907 KAR 1:645. Resource standards for Medicaid
907 KAR 1.650. Trust and transferred resource requirements for Medicaid.
907 KAR 1:655. Spousal impoverishment and nursing facility requirements for Medicaid.

Other Business:
Representative Damron made a motion, seconded by Representative Lee with a third made by Representative Ford, that Representative Combs be nominated for House Co-Chair. Representative Combs accepted the nomination. Representative Lee made a motion, seconded by Representative Damron with a third made by Representative Ford, to end House Co-Chair nominations. Representative Combs was, without objection, endorsed as House Co-Chair of the subcommittee.

Administrative Regulations Review Subcommittee adjourned at 11:05 a.m. until May 12, 2009 at 1 p.m.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates K - 2

The Locator Index lists all administrative regulations published in VOLUME 35 of the Administrative Register from July, 2008 through June, 2009. 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 34 are those administrative regulations that were originally published in VOLUME 34 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2008 bound Volumes were published.

KRS Index K - 14

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 35 of the Administrative Register.

Technical Amendment Index K - 31

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2007 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http://www.lrc ky gov/home htm.

Subject Index K - 32

The Subject Index is a general index of administrative regulations published in VOLUME 35 of the Administrative Register, and is mainly broken down by agency.

Regulation Number	34 Ky.R. Page No.	Effective Date

VOLUME 34

The administrative regulations listed under VOLUME 34 are those administrative regulations that were originally published in Volume 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first)

103 KAR 3:010E	2066	2-11-08
Replaced	2379	6-6-08
103 KAR 3:030E	2266	2-19-08
Replaced	2516	7-7-08
103 KAR 3:040E	1925	1-15-08
Replaced	2381	6-6-08
103 KAR 31:180E	1350	11-15-07
Expired		5-13-08
201 KAR 20:070E	2500	5-5-08
Replaced		(See 35 Ky R)
201 KAR 30:190E	1628	12-14-07
Replaced	2394	6-6-08
307 KAR 1.040E	909	10-8-07
Replaced	1719	2-1-08
401 KAR 9.010E	2275	3-3-08
Replaced		(See 35 Ky.R.)
503 KAR 1:190E	2069	2-6-087
Replaced	2534	7-7-08
900 KAR 6:050E	2502	4-29-08
Replaced		(See 35 Ky.R.)
900 KAR 7:020E	958	9-18-07
Expired		3-16-08
907 KAR 1.015E	164	7-12-07
907 KAR 1:160E	1653	12-5-07
Replaced	2535	7-7-08
907 KAR 1:820E	1381	11-15-07
Replaced	2409	6-6-08

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 4:080		
Amended	2322	8-1-08
11 KAR 5:145		
Amended	2323	8-1-08
11 KAR 18 010		(See 35 Ky R)
Amended	2325	8-1-08
16 KAR 7:010		(See 35 Ky R)
Amended	2413	8-1-08
101 KAR 1:335		
Amended	2419	(See 35 Ky.R.)
101 KAR 2:221	2487	(See 35 Ky.R.)
103 KAR 3.030		
Amended	2329	
As Amended	2516	7-7-08
103 KAR 31:180	1592	
As Amended	2524	7-7-08
103 KAR 50·050	890	
Amended	2421	
Withdrawn		5-28-08
201 KAR 2:220		
Amended	2421	8-1-08
201 KAR 7.015		
Amended	2557	
Amended	1528	
As Amended	1948	1-5-09
Withdrawn	*	8-28-08
201 KAR 16:110	1902	
As Amended		(See 35 Ky.R)
201 KAR 18.210		
Amended	2558	
201 KAR 20·070		
Amended	2559	(See 35 Ky.R.)
201 KAR 20.110		
Amended	2338	
As Amended	2525	6-18-08
201 KAR 20·161		
Amended	2341	
As Amended	2527	6-18-08
201 KAR 20.225		
Amended	2343	
As Amended	2528	6-18-08
201 KAR 20:360		
Amended	1792	
Withdrawn		2-26-08
201 KAR 21:095		
Amended	1533	
Withdrawn		2-15-08
201 KAR 23.015		
Amended	2423	
As Amended	781	10-15-08
201 KAR 23 070		
Amended	2424	
As Amended	782	10-15-08
201 KAR 33 020		
Amended	2211	
As Amended	2529	7-7-08
301 KAR 1:130		
Amended	2427	(See 35 Ky.R.)
301 KAR 1:140		
Amended	2213	(See 35 Ky.R.)
301 KAR 1:146		
Amended	2215	(See 35 Ky.R.)
301 KAR 1.155		
Amended	2217	
Amended	2552	(See 35 Ky.R)
301 KAR 2.041		
Amended	2222	
As Amended	2529	6-11-08
301 KAR 2:049		
Amended	2428	(See 35 Ky.R.)
301 KAR 2 081		
Amended	2432	(See 35 Ky.R.)
301 KAR 2:111		
Amended	2435	7-9-08
301 KAR 2 122		
Amended	2437	7-9-08
301 KAR 2:172		
Amended	2439	(See 35 Ky.R.)
301 KAR 2:178		
Amended	2442	(See 35 Ky.R.)
301 KAR 3:022		
Amended	2224	(See 35 Ky.R.)
401 KAR 3:310		
Amended	2562	(See 35 Ky R.)
301 KAR 4·201	2491	7-9-08
401 KAR 6.001	2626	(See 35 Ky.R)
401 KAR 6.320		
Amended	2576	(See 35 Ky.R.)
401 KAR 6:350	2627	(See 35 Ky.R.)
401 KAR 9:010	2369	(See 35 Ky.R.)
401 KAR 9:020	2370	(See 35 Ky.R.)
401 KAR 32:010		
Amended	2448	(See 35 Ky.R.)
401 KAR 32.050		
Amended	2449	(See 35 Ky.R.)
401 KAR 34:005		
Amended	2451	(See 35 Ky.R.)

Regulation Number	34 Ky.R. Page No.	Effective Date
401 KAR 34:080		
Amended	2455	(See 35 Ky.R.)
401 KAR 35:005		
Amended	2457	(See 35 Ky.R.)
401 KAR 35:080		
Amended	2462	(See 35 Ky.R.)
401 KAR 36:030		
Amended	2463	(See 35 Ky.R.)
401 KAR 37:005		
Amended	2465	(See 35 Ky R)
401 KAR 37.040		
Amended	2468	(See 35 Ky.R.)
401 KAR 38:005		
Amended	2470	(See 35 Ky.R.)
401 KAR 38 040		
Amended	2474	(See 35 Ky.R.)
401 KAR 43.005		
Amended	2475	(See 35 Ky.R.)
500 KAR 14.010		
Amended	2580	
Withdrawn		7-18-08
500 KAR 14:020		
Amended	2582	
Withdrawn		7-18-08
501 KAR 3:140		
Amended	2476	(See 35 Ky R.)
501 KAR 6.120		
Amended	2345	7-7-08
501 KAR 6.140		
Amended	2586	(See 35 Ky.R.)
501 KAR 6 999		
Amended	2347	
As Amended	2531	7-7-08
501 KAR 7.070		
Amended	2481	8-1-08
503 KAR 1:190	2534	7-7-08
702 KAR 3:270		
Amended	2231	(See 35 Ky.R.)
702 KAR 4:180		
Amended	2484	(See 35 Ky.R.)
803 KAR 25:012		
Amended	633	
806 KAR 12:180	1600	(See 35 Ky.R.)
810 KAR 1 015		
Amended	1220	
Amended	2053	
815 KAR 7:120		
Amended	2590	(See 35 Ky.R.)
815 KAR 7:125		
Amended		(See 35 Ky.R)
900 KAR 6:050		
Amended	2594	
As Amended	826	10-15-08
900 KAR 7:020	1334	
Withdrawn	**	11-1-08
902 KAR 55:030		
Amended	2607	(See 35 Ky.R.)
902 KAR 55:110		
Amended	2609	(See 35 Ky.R.)
907 KAR 1:013		
Amended	1560	
Withdrawn		11-15-07
907 KAR 1:160		
Amended	1834	
Amended	2315	
As Amended	2535	7-7-08
907 KAR 1:479		
Amended	2611	(See 35 Ky R.)
908 KAR 3 050		
Amended	2350	(See 35 Ky R.)
908 KAR 3.060		
Amended	2352	
As Amended	2540	6-18-08
910 KAR 1:160		
Amended	1860	
921 KAR 3:030		
Amended	2623	(See 35 Ky.R.)
921 KAR 1:400		
Amended	1870	
As Amended	2143	3-19-08
921 KAR 1:410		
Amended	1874	
As Amended	2146	3-19-08
921 KAR 1:430	1909	
As Amended	2150	3-19-08
921 KAR 2.015		
Amended	1879	
As Amended	2152	3-19-08
922 KAR 1:310		
Amended	2355	(See 35 Ky.R.)
922 KAR 2:170		
Amended	1284	
As Amended	2543	6-18-08
922 KAR 2:210		
Amended	1290	
As Amended	2547	6-18-08

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EMERGENCY ADMINISTRATIVE REGULATIONS:
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

31 KAR 4:140E	505	8-8-08
Replaced	1150	12-5-08
101 KAR 2:066E	507	7-18-08
Withdrawn		1-9-09
Resubmitted	1710	1-9-09
101 KAR 2:210E	1130	9-15-08
Replaced	1243	2-6-09
103 KAR 3:040E	1712	1-15-09
105 KAR 1:130E	2385	4-15-09
105 KAR 1:140E	709	9-2-08
Replaced	1719	2-6-09
105 KAR 1:345E	711	9-2-08
Replaced	1721	2-6-09
105 KAR 1:380E	712	9-2-08
Replaced	1722	2-6-09
105 KAR 1:390E	715	9-2-08
Replaced	1723	2-6-09
105 KAR 1:400E	719	9-2-08
Replaced	1726	2-6-09
105 KAR 1:420E	722	9-5-08
Replaced	1729	2-6-09
105 KAR 1:430E	724	9-2-08
Replaced	1730	2-6-09
200 KAR 5:390E	509	7-17-08
Replaced	1151	12-5-08
200 KAR 6:070E	2199	2-17-09
200 KAR 14:011E	2200	2-19-09
200 KAR 15:010E	1984	2-2-09
201 KAR 5:120E	1391	11-12-08
201 KAR 20:070E		(See 34 Ky.R.)
Replaced	208	9-5-08
201 KAR 27:100E	221	7-15-08

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Replaced	1438	1-5-09
202 KAR 7:330E	226	7-11-08
Replaced	1167	12-5-08
301 KAR 2:083E	725	8-29-08
Replaced	1002	1-5-09
301 KAR 2:221E	1706	11-21-08
Replaced		4-3-09
301 KAR 2:222E	1708	11-21-08
Replaced		4-3-09
301 KAR 2:225E	729	8-29-08
Replaced	1005	1-5-09
302 KAR 16:111E	1986	2-13-09
302 KAR 76:110E	5	6-4-08
Expired		12-1-08
302 KAR 79:010E	1132	10-10-08
Replaced	1735	2-6-09
307 KAR 1:050E	510	7-21-08
Replaced	1167	12-5-08
401 KAR 9:010E		(See 34 Ky.R.)
Replaced	259	8-21-08
401 KAR 10.001E	6	6-12-08
Replaced	1452	1-5-09
502 KAR 15:010E	229	7-15-08
Replaced	246	10-31-08
502 KAR 32.010E	230	7-1-08
Replaced	567	10-31-08
505 KAR 1:100E	1721	1-15-09
601 KAR 1:040E	1134	9-29-08
Replaced	1737	2-6-09
702 KAR 1:130E	233	6-13-08
Expired		12-13-08
735 KAR 1:010E	2387	4-7-09
735 KAR 1:020E	2391	4-7-09
803 KAR 25:089E	234	7-1-08
Replaced	1188	12-5-08
803 KAR 25:091E	236	6-1-08
Withdrawn		11-22-08
806 KAR 2:092E	512	8-14-08
Replaced	1466	1-5-09
806 KAR 15 080E	514	8-14-08
Replaced	1471	1-5-09
806 KAR 17:180E	238	7-15-08
Replaced		10-31-08
806 KAR 17:540E	516	7-15-08
Replaced	667	1-5-09
806 KAR 17:545E	518	7-15-08
Replaced	668	1-5-09
806 KAR 17:555E	521	7-15-08
Replaced	1471	1-5-09
806 KAR 18 090E	2395	3-13-09
810 KAR 1:018E	731	9-5-08
Replaced	407	2-6-09
810 KAR 1:025E	1392	11-3-08
810 KAR 1:028E	739	9-5-08
Replaced	1787	2-6-09
811 KAR 1.070E	1399	11-3-08
811 KAR 1:090E	744	9-5-08
Replaced	1791	2-6-09
811 KAR 1:095E	752	9-5-08
Replaced	1798	2-6-09
811 KAR 2:120E	1722	12-31-08
Replaced	1914	1-4-09
815 KAR 25:080E	1713	12-15-08
Replaced		4-3-09
815 KAR 35.015E	1988	2-9-09
Withdrawn		3-24-09
900 KAR 6.050E		(See 34 Ky.R.)
Replaced	826	10-15-08
902 KAR 20:106E	1726	1-5-09
907 KAR 1:170E	1715	12-2-08
907 KAR 1:825E	240	6-16-08
Replaced	1804	1-5-09
907 KAR 1.835E	524	7-17-08
Replaced	1804	2-6-09
907 KAR 1:911E*(r)*	248	10-31-08
921 KAR 2:015E	1729	12-22-08
907 KAR 3:210E	1407	11-10-08
921 KAR 2:370E	1137	9-29-08
Replaced		4-3-09
921 KAR 3:020E	1142	9-29-08
Replaced	1814	2-6-09
921 KAR 3.045E	1147	9-29-08
Replaced	1817	2-6-09
921 KAR 4:116E	1735	12-22-08
922 KAR 1:360E	250	6-30-08
Replaced	845	10-15-08
Resubmitted	1992	1-30-09
ORDINARY ADMINISTRATIVE REGULATIONS:		
10 KAR 7.010		
Amended	1237	
Withdrawn		12-16-08
Amended	2464	
10 KAR 7:020		
Amended	1239	
Withdrawn		12-16-08
Amended	2466	
11 KAR 3·100		
Amended	63	9-8-08
11 KAR 4 080		
Amended	2314	
11 KAR 5:200		
Amended	949	1-5-09
Amended	2315	
11 KAR 8:030		
Amended	950	
As Amended	1424	1-5-09
11 KAR 8 040		
Amended	954	
As Amended	1426	1-5-09
11 KAR 14.060		
Amended	957	
As Amended	1428	1-5-09
11 KAR 14.080		
Amended	959	
As Amended	1429	1-5-09
11 KAR 15:090		
Amended	961	
As Amended	1430	
Withdrawn		12-16-08
Amended	1840	
As Amended	1999	4-3-08
11 KAR 18.010		(See 34 Ky.R.)
As Amended	10	8-1-08
Amended	965	
As Amended	1432	1-5-09
Amended	2317	
13 KAR 2:020		
Amended	1812	
As Amended	2398	
16 KAR 3:050		
Amended	77	
As Amended	758	10-13-08
16 KAR 5:010		
Amended	2321	
16 KAR 5:020		
Amended	80	
As Amended	535	9-8-08
16 KAR 6.010		
Amended	1842	
As Amended	2001	4-3-08
16 KAR 7:010		(See 34 Ky.R.)
As Amended	11	
17 KAR 3.020		

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Amended	611	12-4-08
17 KAR 4.020	1369	
As Amended	1719	2-6-09
17 KAR 5:010	1093	
As Amended	1434	1-5-09
31 KAR 4:140		
Amended	612	
As Amended		12-5-08
101 KAR 1:325		
Amended	1846	
101 KAR 1:335		(See 34 Ky.R.)
As Amended	256	9-5-08
101 KAR 2.066		
Amended	614	
Withdrawn		1-9-09
Amended	1815	
101 KAR 2 210		
Amended	1243	2-6-09
101 KAR 2:221		(See 34 Ky.R.)
As Amended	16	8-1-08
102 KAR 1:070		
Amended	1817	
As Amended	2400	
102 KAR 1:105	1940	
As Amended	2401	
102 KAR 1:170	1941	
As Amended	2401	
102 KAR 1 225	1943	
Amended	2403	
102 KAR 1 230		
Amended	1819	
As Amended	2403	
102 KAR 1:240		
Amended	1822	
As Amended	2406	
102 KAR 1:245	1945	
As Amended	2407	
102 KAR 1:300	1946	4-3-08
103 KAR 1:150	675	
As Amended	1435	1-5-09
103 KAR 3 010		
Amended	2468	
103 KAR 3.020		
Amended	82	
Amended	576	
As Amended	760	10-31-08
103 KAR 3:040		
Amended	1824	
As Amended	2204	
103 KAR 3:050		
Amended	87	
As Amended	764	10-31-08
103 KAR 25.111(r)	1951	4-3-08
103 KAR 27.130		
Amended	1849	
As Amended	2004	4-3-08
103 KAR 30:091		
Amended	96	
Amended	580	
As Amended	772	10-31-08
103 KAR 31:190	1952	
As Amended	2005	4-3-08
103 KAR 31:200	452	
As Amended	777	10-31-08
105 KAR 1:130		
Amended	969	
Withdrawn		12-8-08
Amended	2472	
105 KAR 1.140		
Amended	970	
As Amended	1719	2-6-09
105 KAR 1:160		
Amended	101	10-3-08
105 KAR 1:170		
Amended	103	
As Amended	536	10-3-08
105 KAR 1:180		
Amended	105	10-3-08
105 KAR 1:200		
Amended	108	
As Amended	536	10-3-08
105 KAR 1.210		
Amended	111	
As Amended	538	10-3-08
105 KAR 1:220		
Amended	115	
As Amended	541	10-3-08
105 KAR 1:240		
Amended	117	10-3-08
105 KAR 1:270		
Amended	119	10-3-08
105 KAR 1:310		
Amended	121	
As Amended	542	10-3-08
105 KAR 1:330		
Amended	124	10-3-08
105 KAR 1.345	1094	
As Amended	1721	2-6-09
105 KAR 1.360		
Amended	127	
As Amended	544	10-3-08
105 KAR 1:370		
Amended	128	
As Amended	544	10-3-08
Amended	1850	
As Amended	2212	
105 KAR 1:380		
Amended	973	
As Amended	1722	2-6-09
105 KAR 1 390		
Amended	975	
As Amended	1723	2-6-09
105 KAR 1.400	1096	
As Amended	1726	2-6-09
105 KAR 1:420	979	
As Amended	1729	2-6-09
105 KAR 1:430	980	
As Amended	1730	2-6-09
105 KAR 1:440	1953	
As Amended	2212	
200 KAR 5 380		
Amended	2331	
200 KAR 5:390	676	
As Amended	1151	12-5-08
200 KAR 6 070	2371	
200 KAR 14·011		
Amended	2332	
200 KAR 17:010		
Amended	2474	
200 KAR 17.090	453	
As Amended	778	10-31-08
201 KAR 1.065		
Amended	2479	
201 KAR 1:100		
Amended	2481	
201 KAR 1:160		
Amended	616	
As Amended	1151	12-5-08
201 KAR 1:171*(r)*	678	12-5-08
201 KAR 2:045		
Amended	2484	
201 KAR 2:050		
Amended	1833	
201 KAR 2:105		

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Amended	982	
Amended	1826	
As Amended	1740	2-18-09
201 KAR 2.230		
Amended	1851	4-3-08
201 KAR 2:310	1954	
As Amended	2006	4-3-08
201 KAR 5:120	1673	
Amended	2080	
As Amended	2408	
201 KAR 7.015		
Amended	985	
201 KAR 9 011	455	
201 KAR 10:050		
Amended	316	
As Amended	1152	
Withdrawn		10-15-08
201 KAR 10:050		
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201 KAR 12:105		
Amended	1853	
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201 KAR 14.150		
Amended	986	
As Amended	1435	1-5-09
201 KAR 14 051		
Amended	1835	
As Amended	2212	
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Amended	1854	
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Amended	988	
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201 KAR 18.142		
Amended	2337	
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Amended	1839	
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201 KAR 20:360		
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Amended	1507	
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201 KAR 20:410		
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201 KAR 20 500		
Amended	1843	
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As Amended	1438	1-5-09
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Amended	618	
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Amended	2487	
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Amended	1861	
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Amended	1863	
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Amended	1866	
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201 KAR 32.070		
Amended	1867	
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201 KAR 33:020		
Amended	1869	
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201 KAR 35·020		
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Amended	320	
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201 KAR 41:070		
Amended	626	
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Amended	326	
Amended	850	
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Amended	992	
Amended	1829	
As Amended	1742	3-6-09
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Amended	335	
Amended	851	
As Amended	1163	11-12-08
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301 KAR 1:410		
Amended	995	
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301 KAR 2:030		
Amended	1000	
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Amended	340	
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Amended	1878	
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Amended	1005	1-5-09
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Amended	1008	
As Amended	1743	3-6-09
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Amended	349	
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Amended	1508	3-6-09
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Amended	2493	
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Amended	2507	
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Amended	585	
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Amended	1511	4-3-08
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401 KAR 8:040		
Amended	1844	
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Amended	1541	
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Amended	1546	
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Amended	1551	
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Amended	1557	
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502 KAR 32:010		
Amended	381	
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503 KAR 1:140		
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Amended	2454	
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Amended	1274	
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780 KAR 6.080		
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780 KAR 6 090		
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780 KAR 6.100		
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780 KAR 7:010		
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787 KAR 1:090		
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Amended	1909	
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Amended	1019	
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803 KAR 2:305		
Amended	1289	
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805 KAR 5.030		
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Amended	1485	4-14-09
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806 KAR 2:090		
Repealed	1103	1-5-09
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806 KAR 2.092	682	
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806 KAR 2.096		
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806 KAR 2:111		
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806 KAR 3:170		
Amended	1304	
Amended	1831	
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806 KAR 6.130	684	
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806 KAR 9.220		
Amended	1023	
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806 KAR 9:070		
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806 KAR 9.310		
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806 KAR 9:340		
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806 KAR 15:080	686	
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806 KAR 14 060		
Amended	1312	
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806 KAR 17.005		
Amended	652	
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806 KAR 17:081		
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806 KAR 17:310		
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(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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142.050	103 KAR 3 050
142.321	103 KAR 3.050
142.327	103 KAR 3.050
142.357	103 KAR 3.050
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143.050	103 KAR 3:050
143 060	103 KAR 3:050
143.085	103 KAR 3.050
143.990	103 KAR 3:050
143A.010	103 KAR 3.050
143A.030	103 KAR 3.050
143A.035	103 KAR 3 050
143A.037	103 KAR 3.050
143A.080	103 KAR 3.050
143A.090	103 KAR 3 050
143A.100	103 KAR 3 050
143A.991	103 KAR 3 050
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146.600-146.619	401 KAR 10.001
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150 015	301 KAR 2:015
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150.070	301 KAR 1:201
150.175	301 KAR 1:201
150 092	301 KAR 2:30
150.120	301 KAR 1:410
150.170	301 KAR 1:125
	301 KAR 1:410
	301 KAR 2:030
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150.175	301 KAR 1:201
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150.275	301 KAR 3.022
150.280	301 KAR 2.083
	301 KAR 3.022
150.290	301 KAR 2:083
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150.320	301 KAR 2.082
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150.400	301 KAR 2.251
150.410	301 KAR 2.251
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150.440	301 KAR 1:410
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157.380	702 KAR 7:130
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158.135	922 KAR 1:310
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161.600	102 KAR 1:070
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199.493	922 KAR 1:310
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199.520	922 KAR 1:100
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199.525	922 KAR 1:100
199.555	922 KAR 1:050
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199.557	922 KAR 1:060
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